11-601

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1070.

PHILADELPHIA BAR ASSOCIATION

MAHLON B. CRAMPTON, APPELLANT,

vs.

AUGUSTUS ZABRISKIE, WILLIAM W. SHIPPEN, FRANCIS G. WETMORE, AND STEPHEN D. HARRISON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED NOVEMBER 13, 1879.

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1 *Order allowing appeal.*

United States circuit court for the district of New Jersey.

AUGUSTUS ZABRISKIE ET AL., COMPLAINANTS, *and* MAHLON B. CRAMTON ET AL., DEFENDANTS.	On bill, &c. Appeal.

The defendant, Mahlon B. Crampton, having presented his petition of appeal, together with a bond duly executed with sufficient surety, and approved with condition according to law, it is on this thirteenth day of October, A. D. eighteen hundred and seventy-nine, ordered that the said petition of appeal and bond be filed, and that the said appeal be granted, and that all further proceedings on the decree in this court be stayed pending said appeal.

It is further ordered that the clerk of this court make return of the said cause and send under the seal of this court all the papers and proceedings therein to the Supreme Court of the United States at Washington, in the District of Columbia, according to the law and
2 rules of the said Supreme Court.

JNO. T. NIXON,
District Judge.

Filed Oct. 13, 1879.

3 United States circuit court, district of New Jersey, third district.

BETWEEN AUGUSTUS ZABRISKIE, WILLIAM W. SHIPPEN, FRANCIS G. WETMORE, & STEPHEN D. HARRISON, COMPLAINANTS, *and* MAHLON B. CRAMPTON AND THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, DEFENDANTS.	In equity. On bill, &c.

Appeal from the circuit court to the Supreme Court of the United States.

To the honorable the Supreme Court of the United States:

The appeal of Mahlon B. Crampton, one of the above-named defendants, and the appellant, respectfully showeth—

That on the fourth day of April, A. D. eighteen hundred and seventy-eight, the above named complainants filed their bill in the circuit court of the United States for the district of New Jersey, against the above-named defendants, of whom the appellant is one, in which they
4 alleged that the complainants were residents and taxpayers in the county of Hudson and State of New Jersey, and owners of lands in said county.

That on the fourteenth day of December, A. D. eighteen hundred and seventy six, the Board of Chosen Freeholders of said county, a municipal corporation of said State, passed a resolution to purchase of said Crampton certain real estate in Jersey City, in said county of Hudson, on which to erect certain public buildings of said county, at the price of two thousand dollars for every twenty-five hundred square feet of said lands, and that in payment for said lands there be issued to the said Crampton a bond or bonds of said county of Hudson; which reso-

lution provided, further, for the examination of the title to said lands the acceptance of the resolution by said Crampton, and the details of the issuing and execution of said bonds and the provision for the method of their payment.

That the said Crampton is a resident of the State of New York, and that on the eighteenth day of December, A. D. eighteen hundred and seventy-six, he filed his written acceptance of the terms of
5 purchase of said lands as prescribed in said resolutions.

That on the same day the said Crampton did make and execute in pursuance of said resolution his deed conveying said lands to the Board of Chosen Freeholders of the County of Hudson, and did on the twenty-second day of December, in said year, deliver said deed to said board, which deed was duly accepted by said board and on the same day recorded in the clerk's office of the register of deeds for said county in book number 305 of deeds, page 468, &c.

That on said twenty-second day of December, A. D. eighteen hundred and seventy-six, the director of said board and the county collector of said county did, in pursuance of said resolution, make, execute, and deliver to the said Crampton in payment for said lands three bonds, two for seventy-five thousand dollars each and one for seventy-five thousand seven hundred and twenty dollars, each with interest, all to become due in one year, and all payable to the said Crampton.

That on the application of certain tax payers of said county,
6 the supreme court of the State of New Jersey, granted a writ of certiorari directed to said board to bring up said resolution and all other matters connected therewith so far as the same remained before said board for review.

That such proceedings were thereupon had in said court, that by its judgment rendered on the twenty-second day of November, A. D. eighteen hundred and seventy seven, said court declared said resolution illegal and void and set the same aside.

That it then became the duty of said board to reconvey said lands to the said Crampton; that they never did so nor did they tender any deeds thereof to the said Crampton, but remained passive in the matter and have held said lands and enjoyed the benefits thereof ever since the delivery of said deed.

That the said Crampton on the tenth day of March, A. D. eighteen hundred and seventy-eight, commenced an action in the circuit court of the United States for the district of New Jersey against the said board for the recovery of the amount of the said bonds with interest; that said resolution was illegal and that said board had no power to issue said bonds or purchase said lands, and that said bonds are void
7 and that it was the duty of said Crampton to deliver up said bonds to said board and of said board to accept the same and cancel them and to reconvey said lands to the said Crampton, which said bill prays answers under oath, and that the said bonds may be declared to be illegal and void; that the said Crampton may be decreed to deliver the same up to be cancelled; that the said board may be decreed to reconvey said lands to said Crampton and that he may be ordered to accept a deed therefor, and that the said Crampton may be enjoined from prosecuting said action and from attempting in any manner to collect said bonds or any part thereof and from parting with said bonds.

To the said bill several answers were filed by the defendants, The Board of Chosen Freeholders of the County of Hudson, and this appellant. The answer of the said board admits the truth of all or substantially all

of the allegations of the bill except that it denies that any profits arose from said lands and denies all combination and confederacy and tenders itself ready to give a deed as prayed for in the bill.

8 The answer of this appellant fully answers the allegations of the bill, and states that one of the said bonds being for seventy-five thousand dollars, was on the twenty-second day of December, A. D. eighteen hundred and seventy-six, assigned by this appellant to Henry Harrison who still holds it, which assignment was in consideration of the release by said Harrison of the said lands from a mortgage held by him thereon; that said certiorari was not allowed until after the delivery of said deed and bonds, and until after the transaction was closed; that this appellant was not a party thereto; that the supreme court of the State of New Jersey did not and could not pass upon the validity of said deed and bonds; that none of the transactions between the said board and this appellant subsequent to the fourteenth day of December, A. D. eighteen hundred and seventy-six, were removed by said writ of certiorari; that the said writ of certiorari was decided upon by only a part of the supreme court, known as the branch court; that the supreme court is not the court of last resort in New Jersey

9 and that the opinion and decision of the supreme court are of no binding force upon this appellant, and that he is not concluded thereby.

The answer of this appellant also denies that it was the duty of the said board to reconvey said lands, or this appellant to deliver up said bonds. It also denies the illegality of said bonds, and affirms their validity and the legality of said purchase, and charges the right of this appellant to recover upon the bonds held by him (which are the other two bonds referred to in said bill, except the one assigned to said Harrison). It also alleges the power of said board to make said purchase, and as made and executed. It submits that all the matters set forth in said bill of complainant should be tried at law. It denies all combination and confederacy, and that the complainants are entitled to the relief prayed for. It admits substantially many of the allegations of the bill, prays the same advantage by answers as if this appellant had plead a demurrer, and that the bill be dismissed. For further particulars

10 of the bill and answers reference is made thereto.

On the bill, answers, and proofs, a hearing was had before the honorable John T. Nixon, judge holding said circuit court, and on the first day of October, A. D. eighteen hundred and seventy-nine, a final decree was made by said judge in said cause, wherein it was in substance adjudged and decreed that the said contract between this appellant and the said board was illegal and void; that the said board do reconvey said lands to this appellant, clear of all encumbrances thereon made by said board whilst holding the legal title to the same, but subject nevertheless to such equities as Henry Harrison, trustee under the will of James Harrison, deceased, may have in such lands; that this appellant do surrender and deliver up to the said board the said bonds held by him at the time of filing his answer in this cause, and do accept and receive from the said board the said deed ordered to be given by said board; that this appellant do cease from maintaining and prosecuting any action or suit against the said board, upon the said bonds or

11 any portion of the same, or for the value of the lands and real estate in the bill of complaint mentioned; and that this appellant be enjoined from assigning, transferring, or in any way parting with the said bonds, except to surrender them to the said board, and that the said board be enjoined and restrained from paying the said bonds,

or any portion thereof, in the bill of complaint mentioned and described, and that either party may apply to the court to have any question regarding the profits and burdens of said lands adjusted and settled between the respective parties, which decree was filed on the said first day of October, A. D. 1879.

Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court, and the bill, answers, pleadings, depositions, evidence, exhibits, and proceedings in the said cause may be sent to the said Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said bill
12 with costs, or such other decree as the said Supreme Court shall deem just.

Dated October 13, A. D. 1879.

MAHLON B. CRAMPTON.

BEDLE, MUIRHEID & MCGEE,
Of Counsel with Appellant.

Appeal allowed, October 13, 1879.

JNO. T. NIXON, *J.*

Filed Oct. 13, 1879.

13 Know all men by these presents, that we, Mahlon B. Crampton, of the city, county, and State of New York, and John Lamb, of Jersey City, Hudson County, State of New Jersey, are held and firmly bound unto Augustus Zabriskie, William W. Shippen, Francis G. Wetmore, and Stephen D. Harrison, all of Hudson County, State of New Jersey, in the sum of two hundred and fifty dollars ($250 00), lawful money of the United States of America, to be paid to the said Augustus Zabriskie, William W. Shippen, Francis G. Wetmore, and Stephen D. Harrison, their executors, administrators, or assigns, for which payment well and truly to be made we bind our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this thirteenth day of October, one thousand eight hundred and seventy-nine.

Whereas the above-named Mahlon B. Crampton has appealed or intends to appeal, within the time prescribed by law, from the decree of the circuit court of the United States for the district of New Jersey, the third circuit, made and filed at Trenton, New Jersey, in said district, on the first day of October, eighteen hundred and seventy-nine (in
14 a case wherein the said Augustus Zabriskie, William W. Shippen, Francis G. Wetmore, and Stephen D. Harrison are complainants and said Mahlon B. Crampton is defendant), to the Supreme Court of the United States to reverse the decree rendered, as aforesaid, in said suit by the judge of the circuit court of the United States for the district of New Jersey:

Now, therefore, the condition of this obligation is such, that if the above-named Mahlon B. Crampton shall prosecute his said appeal to effect, and if he fail to make his appeal and plea good shall answer all

damages and costs, then this obligation shall be void; otherwise to remain in force.

MAHLON B. CRAMPTON. [SEAL.]
J. LAMB. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. W. CASSEDY.

15 UNITED STATES OF AMERICA,
District of New Jersey:

John Lamb, of Jersey City, Hudson County, New Jersey, the surety named in the foregoing bond or obligation, being duly sworn, on his oath deposeth and saith that he resides in Jersey City, State of New Jersey, and is worth the sum of ten thousand dollars over and above all his just debts and liabilities, and besides he is a freeholder in said city of Jersey City to at least the amount of ten thousand dollars.

J. LAMB.

Sworn and subscribed to this thirteenth day of October, A. D. 1879, before me, at Jersey City, of the district of New Jersey.

GEO. W. CASSEDY,
U. S. Commissioner.

Approved.

JNO. T. NIXON, *J.*

Filed Oct. 13, 1897.

16 United States circuit court for the district of New Jersey. In equity.

BETWEEN AUGUSTUS ZABRISKIE, WILLIAM W. Shippen, Francis G. Wetmore, and Stephen D. Harrison, complainants,
and
MAHLON B. CRAMPTON AND THE BOARD OF Chosen Freeholders of the County of Hudson, defendants.

To the honorable the judges of the circuit court of the United States for the district of New Jersey:

Humbly complaining, showeth unto your honors your orators, Augustus Zabriskie, William W. Shippen, Francis G. Wetmore, and Stephen D. Harrison, all being residents of and taxpayers in the county of Hudson, in the State of New Jersey, and owners of land in said county, that on the fourteenth day of December, eigteen hundred & seventy-six, the Board of Chosen Freeholders of the County of Hudson, in
17 the State of New Jersey, a municipal corporation of said State, passed a resolution of which the following is a copy, to wit:

"Whereas remonstrances have been presented by the property owners and citizens of this county to this board against the expenditure of any more money in repairing or making additions to the old court-house of this county, and suggesting that the relief demanded by the grand juries and by the county officers and courts of the county shall be found in a new court-house, and whereas, the said remonstrances and the whole matter of the want of a new court-house in this county, with county officers and accom'odations for the grand juries has been referred to a committee of this board, who have reported to this board that they find

it true; that the grand jury and witnesses have not proper accom'odation; that the witnesses are obliged to stand in the hallway of the old court-house where it is cold, dark, and damp, awaiting their turn to be heard; that old building has not the necessary accom'odations for the county officers; and that the room in which is held the quarter sessions is almost unendurable; and that it would cost a large sum of money to make additions to the old building sufficient for the purposes of the county; and that even then a proper available space and light could not be obtained.

18 "And whereas, the said committee also reports that it would be wise to provide suitable grounds upon which could be erected a new court-house; and that they have considered different locations and have concluded that the property of Mr. Mahlon Crampton, at the corner of Newark and Palisade avenues would be altogether the best for a site for a new court-house, being easy of access from all parts of the county and very central; and that the amount of land requires for a new court-house, and public offices of this county can be obtained cheap; and that portions of said land of Mr. Mahlon Crampton, at the corner of Newark & Palisade avenues, lying north of the southerly line of Waldo avenue, if the same were produced across the Crampton property can be obtained for the sum of two thousand dollars for every twenty-five hundred square feet; and recommending the purchase thereof at that price, therefore be it

"Resolved, That after mature consideration, this board have come to the conclusion that further accom'odations than are now possessed by the county are necessary for the proper transaction of the public business, and the security & preservation of the public records

19 of the county; that any attempt to enlarge or adapt the present court house to meet the pressing wants of the county, would be a wasteful expenditure of public money; and that the time has fully arrived when the public necessities of the county of Hudson requires the erection of a new court-house and offices for the preservation of the public records of the county, and proper and convenient offices for the sheriff, county, clerk, register, surrogate, and prosecutor of the pleas, and accom'odations for the courts, the grand & petit juries, and witnesses, and meetings and business of the Board of Chosen Freeholders, and of the board of vital statistics, and that the county of Hudson does not, at the present time, own any sufficient quantity of land upon which to erect any such new court-house offices; and that it is the duty of this board at this time, to procure such land as may be needed for such purposes.

"Resolved, That the property of Mr. Mahlon B. Crampton, as stated and set forth in the report of the committee in this matter, is the best and most convenient location, and that the price for which the same is offered by said Mahlon B. Crampton, is, in the judgment of this board, very cheap.

20 "Resolved, That in the judgment of this board, that so much of the lands offered by said Crampton as are needed for the use and convenience of the county, for a site on which to erect a new court-house and rooms & offices for the safe keeping & preservation of the public records, and for the convenience of the public, & accom'odation of the courts & juries and witnesses attending upon the same, and for the meeting of the grand jury & witnesses requested or desiring to attend upon the same, and for the sheriff, county clerk, and prosecuting attorney, the surrogate, register, and meetings and business of the board of freeholders, and of the board of health, as lies north of the south-

erly line of Waldo avenue, if the same were produced across said property furnished to and now in possession of this board; and that the same is hereby taken and purchased at the price of two thousand dollars for every twenty-five hundred square feet thereof; and that in payment for said lands there be issued to said Crampton a bond or bonds of the county of Hudson, payable out of the amount appropriated and limited for the expense of the next fiscal year, said bonds to run one year from the date thereof, and bearing interest at the rate of seven per cent. per annum.

21 "Resolved, That the counsel to the board be authorized to examine the title of said Crampton to the land at the corner of Newark & Palisade avenues, Jersey City, as above set forth and shown on a map now in the possession of this board; and if the same be satisfactory, that he ascertain the number of square feet contained in that portion of said lands lying north of the southerly line of Waldo avenue, if the same were produced across said property and report the same to the county collector who shall, provided said Crampton shall notify the county clerk of his acceptance of the terms contained in these resolutions, prepare said bond or bonds in amounts equal to the amount of said lands purchased and taken at the rate of two thousand dollars for every twenty-five hundred square feet thereof.

"And the director at large and county collector are hereby authorized and directed to sign said bond or bonds and affix the seal of the county thereto. And whenever the said Crampton shall furnish the county collector a good & sufficient deed vesting the title to said lands in the Board of Chosen Freeholders of the County of Hudson, approved by the counsel of this board, the county collector shall deliver such bond or bonds to said Crampton in full payment for said lands."

Which resolution was duly approved by the director at large on December 16th, A. D. 1876.

22 And your orators further show that on the twentieth day of December, eighteen hundred & seventy-six, the said Mahlon B. Crampton, who is a resident of the city & State of New York, filed in the office of the clerk of the county of Hudson, in the State of New Jersey, his written acceptance of the said terms of purchase of said lands as prescribed in said resolution.

And your orators further show that on the eighteenth day of December, eighteen hundred & seventy six, the said Crampton did in pursuance of the terms of said resolution, make & execute his certain deed conveying to the said Board of Chosen Freeholders of the County of Hudson in fee simple, all that certain plot of land & premises situate in Jersey City, in the county of Hudson, & State of New Jersey, & described as follows, to wit: Begin'ing at the intersection of the easterly line of Newark avenue with the southeasterly line of Palisade avenue, thence running south seven degrees and forty-two minutes east (S. 7° 40′ E.) along the said easterly line of Newark avenue five hundred and sixteen feet (516 f't) to a point in the said easterly line of said Newark avenue where the said line would be intersected by the southeasterly line of Waldo avenue if the same was produced in a northeasterly direction, thence running north fifty-four degrees and thirty-five minutes

23 east (N. 54° 35′ E.) along what would be the southeasterly line of Waldo avenue as aforesaid produced northeasterly seven hundred and eighty feet (780 f't) and three inches (3 in.) to lands of the Long Dock Company, thence along the lands of said company north forty-seven degrees and forty-one minutes west (N. 47° 41′ W.) one hundred and eighty feet (138 f't) to a corner of lands now or late of

Blakely Wilson, deceased, thence north forty-eight degrees and forty-three minutes west (N. 48° 43′ W.) two hundred and nin'ty-seven feet (297 f't) along said Wilson's land to Palisade avenue, thence south fifty-two degrees and ten minutes (S. 52° 10m.) along the southeasterly side of Palisade avenue four hundred and thirty-two feet five inches to the place of beginning, containing two hundred and eighty-two thousand and fifty square feet of land. Bounded easterly by the southeasterly line of Waldo avenue, northwesterly by Palisade avenue, northerly by lands along Dock Company and of land now or late of Blakely Wilson, deceased, and southerly and southwesterly by Newark avenue, and being whole of lands conveyed by Conrad Spengeman to the said Mahlon B. Crampton by deed dated June 30th, 1871, recorded July 3rd, 1871, in book 228 of deeds for Hudson County, pages 731, &c., and also part of the lands described in a certain deed made by Henry
24 Harrison, trustee, &c., to Mahlon B. Crampton by deed dated June 22d, 1871, recorded July 10th, 1871, in book 230 of deeds for Hudson County, pages 127, &c., as by reference to said deeds will fully appear. And did on the twenty-second day of December, eighteen hundred & seventy-six, deliver said deed to said board, which deed was accepted by said board and on the twenty-second day of December, eighteen hundred & seventy-six, was recorded in the office of the register of deeds, in and for the county of Hudson, in the State of New Jersey, in book number 305, on page 468, &c.

And your orators further show that on said twenty-second day of December, eighteen hundred & seventy-six, the director of said Board of Chosen Freeholders of the County of Hudson, and the county collector of the county of Hudson, did in pursuance of said resolution make and execute certain bonds, two of which were for the payment of the sum of seventy-five thousand dollars each, and the other for the payment of seventy-five thousand seven hundred & twenty dollars, each bearing interest from its date at the rate of seven per cent., and was to become due & payable in one year from the dates thereof, which was on the day of their execution; in each & every of said bonds the said director and county collector did pledge the said county
25 of Hudson to pay the amount of said bonds to said Mahlon B. Crampton according to their tenor & effects, which bonds were on the twenty-second day of December, eighteen hundred & seventy-six, being the time of the delivery of the said deed by the said Crompton to said board by said director & county collector delivered to the said Crampton as the consideration for said deed in accordance with the direction of said resolution of said board.

And your orators further show that on the twenty-seventh day of December, eighteen hundred & seventy-six, Charles Liedler, Alexander Bonnell, & Peter Henderson, three residents & tax payers of the county of Hudson, applied to the supreme court of New Jersey for relief from said resolution and purchase, and said *said* supreme court granted the State's writ of certiorari directed to the said Board of Chosen Freeholders, and commanding the said board to send up to said court for review and correction the said resolution, and all other matters concerning or connected therewith so far as the same remained before said board.

And your orators further show that such proceedings were thereupon had in the said supreme court of the State of New Jersey under
26 said writ of certiorari, that on the twenty-second day of November, eighteen hundred & seventy-seven, the said supreme court of New Jersey, by its final judgment in said cause, declared said resolution illegal and void, & set the same aside; and your orators

charge and insist that, if it was not before, it certainly became the duty of the said Board of Chosen Freeholder' and said Crampton, immediately after said adjudication, to have reconveyed said lands and destroyed or returned said bonds, so that your orator & other taxpayers of said county should not be burdened with said purchase. And your orators further show that said Board of Chosen Freeholders of Hudson County have never tendered said Crampton a deed which would vest in him the fee-simple of said lands, nor has the said board ever attempted in any manner to rid itself of the said purchase, or to protect the said county or its taxpayers from the effect thereof, but has quietly remained silent and passive in the matter and has kept the said lands and enjoyed the benefits thereof ever since the delivery of said deed.

And your orators further show that the said Mahlon B. Crampton, notwithstanding the said adjudication of the supreme court of the State of New Jersey, did on the thirteenth day of March, eighteen hun-
27 dred & seventy-eight, commence an action in the circuit court of the United States for the district of New Jersey against the said Board of Chosen Freeholders of the County of Hudson for the recovery of the amount of said bonds with the interest which has accrued thereon, as the price and value of the said lands so conveyed by him as aforesaid, and is thereby attempting to avoid the effect of said adjudication, and to burden your orators and the other taxpayers of the said county of Hudson to the amount of the said bonds with the interest which has accrued thereon.

And your orators are fearful that he may be able to recover the same as against the said board, inasmuch as they still hold the said lands and are enjoying the same, they never having tendered a deed to said Crampton vesting the title thereof in him, nor in any manner attempted to repudiate said purchase, either by application to a court of competent jurisdiction or otherwise.

And your orators further show unto your honors that the said bonds were made payable to the said Mahlon B. Crampton alone, and not to any holder thereof, and your orators charge that the said bonds are still in the hands of the said Crampton.

28 And your orators charge and insist that both said resolution & purchase were illegal, and that the adjudication of the supreme court setting the same aside has invalidated the said purchase and the said bonds and made them of no effect; and they further charge and insist that there never was any power in the said Board of Chosen Freeholders of the County of Hudson to issue the said bonds, nor to pass any resolution to issue the said bonds, nor was there any power in said board at the time of the passage of said resolution to make said purchase and pay for the same in the manner directed in said resolution, nor to purchase the lands by the description contained in the said resolution; and your orators further charge and insist that said resolution was illegal, and that therefore the said bonds are of no effect and the said purchase is void, and that on those accounts it became and is now the duty of the said Crampton in equity to deliver up to said board the said bonds to be cancelled, and to accept a reconveyance of said lands and premises, and it also became and is now the duty of the said board to accept said bonds & cancel the same, and to reconvey to said Crampton said lands and premises, so that your orators and the other
29 taxpayers of said county may not be burdened by reason of the said purchase having been made and the bonds having been issued, and the said suit to collect the amount thereof; and they further charge and insist that it has been the duty of the said board ever since

the said adjudication of the said supreme court, to have sought the aid of this or some other court of competent jurisdiction to have relieved your orators & other taxpayers of said county of Hudson from the effect of said purchase and the issue of said bonds, providing the said Crampton would not voluntarily relieve said board and said taxpayers from the effect thereof and accept a reconveyance of said lands; but your orators charge & insist that the truth is, that the said Board of Chosen Freeholders of the said county of Hudson have intended and do intend to carry out said purchase if they are not enjoined & restrained therefrom by some court of competent jurisdiction, by keeping possession of said lands, and thereby becoming estopped from pleading the ultra vires of the said board.

In tender consideration whereof, and inasmuch as your orators are remediless in the premises in the courts of law, and can only have adequate relief in a court of equity, and to the end that the said
30 Mahlon B. Crampton and the Board of Chosen Freeholders of the County of Hudson, the defendants to this suit, and each of them, may answer, upon their respective oaths or affirmation, according to best of their respective knowledge, information, and belief, all and singular the premises, & each fact above stated, as fully and particularly as if the same were here again repeated and they thereunto particularly interrogated.

That the said bonds may be declared to be illegal and void, and the said Crampton be ordered to deliver the same up to the said Board of Chosen Freeholders of the County of Hudson to be cancelled.

That the said Board of Chosen Freeholders of the County of Hudson may be ordered to reconvey said lands & premises to the said Crampton; that the said Crampton may be ordered and directed to accept from said Board of Chosen Freeholders of Hudson County a deed vesting the title of said lands in him in fee simple.

That your orators may have such other and further relief as the nature of the case may require, and as may be agreeable to equity and good conscience, with their costs of this suit.

May it please your honor to grant unto your orators a writ
31 of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Mahlon B. Crampton & the Board of Chosen Freeholders of the County of Hudson, enjoining and restraining them, & each of them, from prosecuting or defending the said suit now instituted by the said Crampton against the said Board of Chosen Freeholders of Hudson County, and enjoining & restraining the said Crampton from attempting in any manner to recover or receive the amount of said bonds, or any part thereof, from said Board of Chosen Freeholders of Hudson County, and enjoining & restraining the said Crampton from parting with said bonds until the further order of this court; and restraining & enjoining the said Board of Chosen Freeholders of the County of Hudson from paying said bonds, or in anywise settling with the said Crampton therefor or for the price of said lands; and also the writ of subpœna ad respondendum of the United States of America, issuing out of and under the seal of this court, to be directed to the said Mahlon B. Crampton and the Board of Chosen Freeholders of the County of Hudson, commanding them on a certain day, and under a certain penalty therein expressed, to be and appear before
32 your honors in this court, then & there to answer the premises in manner aforesaid, and to stand to, abide by, and perform such

order and decree as to your honors shall seem meet and according to good conscience.

PETER BENTLEY,
Solicitor for & of Counsel with Complainants.

UNITED STATES OF AMERICA,
District of New Jersey, ss :

On this second day of April, 1879, before me, the subscriber, came Augustus Zabriskie, who, being by me duly sworn according to law, on his oath deposeth & saith that he is one of the complainants named in the above stated bill and knows the contents thereof; and he further deposes & says the said facts, allegations, & matters in said bill stated are true, to the best of the knowledge & belief of said deponent.

AUGUSTUS ZABRISKIE.

33 Subscribed & sworn to before me, at Jersey City, the day & year first above written.

[SEAL.] L. ZABRISKIE,
Notary Public of New Jersey.

Circuit court of the United States for the district of New Jersey. In equity.

BETWEEN AUGUSTUS ZABRISKIE ET ALS., compl't', *and* MAHLON B. CRAMPTON AND ANOTHER, D'F'D'TS.

UNITED STATES OF AMERICA,
District of New Jersey, ss :

Edmund W. Kingsland maketh oath and saith that he is the collector of the county of Hudson, in said district; that the Board of Chosen Freeholders of the County of Hudson have not paid the bonds mentioned in the bill of complaint in this cause, nor any sum of money, to any
34 person as the price and value of the land in said bill described, and which was conveyed to said board by said Crampton; that the summons issued in said cause against said county is in the sum of five hundred thousand dollars.

That as collector of said county deponent acquires a general knowledge of all important transactions of said board, that deponent has never heard of the said board having any transaction with said Crampton other than the one mentioned in said bill of complaint.

That deponent believes that said suit by said Crampton is brought to recover from said board the amount of said bonds as the price and value of the said lands described in said bill.

E. W. KINGSLAND.

Subscribed & sworn to before me at Jersey City, April 10th, 1878.

[SEAL.] HENRY A. WHITE,
Notary Public of New Jersey.

35 Circuit court of the United States for the district of New Jersey.
In equity.

BETWEEN AUGUSTUS ZABRISKIE, WILLIAM W. Shippen, Francis Wetmore, & Stephen D. Harrison, complainants,
and
MAHLON B. CRAMPTON AND THE BOARD OF Chosen Freeholders of the County of Hudson, defendants.

UNITED STATES OF AMERICA,
District of New Jersey, ss:

Augustus Zabriskie, one of the complainants in the above-stated cause, and residents of Jersey City, New Jersey, makes oath & saith that the Board of Chosen Freeholders of the County of Hudson, in the State of New Jersey, did, on the 14th day of December, A. D. 1876, pass a resolution, a copy whereof is set up in the bill of complaint in the above-stated cause, which resolution was, by David C. Halsted, director at large of the county of Hudson, on the 16th day of December, A. D. 1876, approved.

36 That Mahlon B. Crampton, on the 20th day of December, 1876, filed his acceptance of the terms of said resolution in regard to the purchase of the property described in said resolution, in the office of the clerk of the county of Hudson.

That said Crampton is a resident of the city, county, & State of New York.

That said director at large of the county of Hudson & Edmund W. Kingsland, collector of said county of Hudson, did, on the 22d day of December, A. D. 1876, make and deliver the bonds mentioned in said bill of complaint to Mahlon B. Crampton in pursuance of the directions of said resolution.

That said Mahlon B. Crampton did, on the 18th day of December, A. D. 1876, make and execute the deed in said bill described, & did, on 22d day of December, 1876, deliver the same to said Board of Chosen Freeholders of the County of Hudson, who accepted the same, and the same was recorded as in said bill of complaint stated.

That on the 27th day of December, A. D. 1876, Charles Siedler, Alexander Bonnell, and Peter Henderson, three taxpayers of the county of Hudson, applied to the supreme court of the State of New Jersey for a writ of certiorari to review said resolution, and the same was

37 thereupon granted, and such proceedings were thereupon had before said supreme court; that on the 22d day of November, A. D. 1877, the supreme court of New Jersey, by its final judgment, declared said resolution illegal and void, & set the same aside.

That the said Board of Chosen Freeholders has never attempted to rid itself from the effect of said purchase and resolution by the tender of any deed to vest the title of said lands in said Crampton, or by application to any court of competent jurisdiction or otherwise, but have remained in possession of the said premises, in said deed described, ever since its delivery and acceptance, and this deponent believes that said board does not intend to divest itself of said title unless compelled to do so by some court of competent jurisdiction.

That the said Crampton has, as holder of said bonds, commenced his action in this court to recover the amount of said bonds as the price and value of the said lands so conveyed by him to said board, as stated

in said bill of complaint, which suit was commenced on March 13th, 1878.

That deponent and the other complainants in said bill are residents of & taxpayers in the county of Hudson, & State of New Jersey.

38 That said bonds were made payable to said Crampton alone, and not to any holder thereof.

That deponent has read said bill of complaint in this cause, and believes the matters, facts, and things therein stated to be true in all respects.

AUGUSTUS ZABRISKIE.

Subscribed & sworn to before me at Jersey City, this third day of April, A. D. 1878.

[SEAL.] L. ZABRISKIE,
Notary Public of New Jersey.

Filed April 4th, '78.

39 Circuit court of the United States for the district of New Jersey.
In equity.

BETWEEN AUGUSTUS ZABRISKIE ET ALS., compl'ts, *and* MAHLON B. CRAMPTON AND ANOTHER, def'ts.

Upon good cause shown to the court, it is on this fourth day of April, eighteen hundred & seventy-eight, by the court, ordered that the defendants do, on April 30th, 1878, at a circuit court to be held at Trenton, in said district, at eleven o'clock in the forenoon, show cause, if any they have, why an injunction should not issue under the prayer of the bill of complaint filed in the above stated cause, and in accordance therewith, providing that a copy of said bill, with the proof thereto annexed, and a copy of this order, be served upon the said defendants or their attorneys at least ten days before said 30th day of April.

And it is further ordered by the court that the said defend-
40 ant Mahlon B. Crampton do refrain from prosecuting his said suit against the Board of Chosen Freeholders of the County of Hudson, and do refrain from accepting or receiving from said board any sum of money in settlement of his said claim against said board, and do refrain from paying with the bonds of said board which were by said board delivered to him in payment for the lands conveyed by him to said board by deed dated December 18th, 1876, until the further orders of this court.

And it is further ordered by the court that the said defendant, the Board of Chosen Freeholders of the County of Hudson, do refrain from parting with the said lands in said deed from said Crampton, dated December 18th, 1876, and do refrain from paying to said Crampton the amount of said bonds delivered to said Crampton as the price and value of said lands, or any other sum, in settlement of the claim of said Crampton as the value of said lands, until the further order of this court.

JNO. T. NIXON, *J.*

Filed April 4, 1878.

41 Circuit court of the United States for the district of New Jersey.
In equity.

BETWEEN AUGUSTUS ZABRISKIE, WILLIAM W. Shippen, Francis G. Wetmore, & Stephen D. Harrison, complainants,
and
MAHLON B. CRAMPTON & THE BOARD OF Chosen Freeholders of the County of Hudson, defendants.

The answer of Mahlon B. Crampton, one of the defendants, to the bill of complaint of Augustus Zabriskie, William W. Shippen, Francis G. Wetmore, & Stephen D. Harrison.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken, to the many errors, uncertainties, and other imperfections in the said complainants' bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant
42 is advised is or are material or necessary for him to make answer unto, this defendant, for answering, saith that he believes it to be true, and therefore admits that the complainants are all residents and tax-payers of and in the county of Hudson, State of New Jersey, and owners of land in said county.

This defendant also admits that on the fourteenth day of December, A. D. eighteen hundred and seventy-six, the Board of Chosen Freeholders of the County of Hudson passed resolutions, a copy of which is substantially set forth in said bill, but which copy is inaccurate in some particulars, and, therefore, for greater certainty, this defendant hath annexed a correct copy of said resolutions, as schedule to this answer, and prays that it may be taken as a part thereof; reference is also made to the map referred to in said resolutions as a part thereof, which resolutions were duly approved by the director at large of the said county of Hudson, on the sixteenth day of December, A. D. eighteen hundred & seventy-six.

This defendant also admits and saith that this defendant is a resident of Brooklyn (not of the city of New York), in the State of New York, and that on the eighteenth day of December, A. D. eighteen hun-
43 dred and seventy-six, or about that day, he filed in the office of the collector of Hudson County a written acceptance of the terms contained in *in* said resolutions, and strictly complied with the requirement of said resolutions by notifying the said county collector of said acceptance as provided therein.

And this defendant, in further answering, saith that the Board of Chosen Freeholders of the County of Hudson aforesaid consists of sixteen members elected by the people from districts, and in addition thereto there is a director at large also elected by the people, but from the whole county; and for further information in regard to the compos'tion of said board and the election of its members and of the director at large, and of the powers and duties of said board and the director at large, reference is made to the various statutes of the State of New Jersey in relation thereto.

This defendant, in further answering, admits and saith, that in pursuance of the terms of said resolutions and as set forth in said bill of complaint, he did, on the eighteenth day of December, A. D.

44 eighteen hundred and seventy-six, make and execute his deed conveying in fee simple to the said Board of Chosen Freeholders of the County of Hudson the plot of land and premises described in said bill of complaint, but for greater certainty as to the description and contents of said deed refers to the original deed or the record thereof; which said deed this defendant admits and saith was, on the twenty-second day of December, A. D. eighteen hundred and seventy-six, delivered by him to said board, and was then accepted by said board, and afterwards, on the same day, recorded in the register's office of the county of Hudson aforesaid, as set forth in said bill.

And this defendant, in further answering, admits the making and executing of the three several bonds, in pursuance of said resolutions and of the amounts as set forth in said bill of complaint, and that on the said twenty-second day of December, A. D. eighteen hundred and seventy-six, the same were delivered to this defendant as and for the consideration of said deed and purchase, and in accordance with the direction of said resolutions; which bonds were made payable to

45 this defendant, and the following is a copy of one of them, the others being precisely the same except only as to the amount:

$75,000.

STATE OF NEW JERSEY, COUNTY OF HUDSON.

No. 1.

TEMPORARY LOAN BOARD.

Know all men by these presents, that the Board of Chosen Freeholders of the County of Hudson acknowledge themselves indebted, for value received, to Mahlon B. Crampton, in the sum of seventy-five thousand dollars, lawful money of the United States of America, to be paid to the said Mahlon B. Crampton, of the county collector's office in the county of Hudson, on the eighteenth day of December, one thousand eight hundred and seventy-seven, with interest thereon from the date of these presents, at the rate of seven per cent. per annum, payable annually.

This bond being executed and issued in pursuance of a resolution of the said board passed the fourteenth day of December, A. D. 1876, and approved by the director at large Dec. 16, 1876, authorizing the county collector to issue the same for the use of the county in payment for land purchased by said board in pursuance of said resolution.

46 In witness whereof the Board of Chosen Freeholders of the County of Hudson have hereunto affixed their corporate seal and caused these presents to be signed by their director at large this twenty-second day of December, eighteen hundred and seventy-six.

[L. S.] E. W. KINGSLAND,
County Collector of the County of Hudson.
D. C. HALSTED, *at large,*
Director of the Board of Chosen Freeholders of the County of Hudson.

(On the margin:) Board of Chosen Freeholders Hudson County.

47 And this defendant saith, that on the said twenty-second day of December, A. D. eighteen hundred and seventy-six, one of the said bonds, being for seventy-five thousand seven hundred and twenty

dollars, was assigned by this defendant to Henry Harrison, of the city of New York, in the State of New York, for the following consideration: the said Harrison held and now holds a mortgage for the sum of one hundred and fifty thousand dollars upon the whole tract and premises of which the premises included in the deed aforesaid were a part, excepting two or three lots of twenty-five feet front by one hundred feet deep not included in said mortgage, and at the time of the delivery of the said deed to the said board the said Harrison executed and delivered to this defendant a release of the premises included in said deed covered by said mortgage, from the said mortgage, and as a consideration of such release this defendant then assigned and delivered to said Harrison the last-mentioned bond as a security for his said mortgage, and the bond accompanying the same, and which the said mortgage was originally given to secure. From the time of the assignment
48 and delivery of the said bond of seventy-five thousand seven hundred and twenty dollars to said Harrison the said Harrison hath held and now holds the same, as this defendant is informed and believes, and as security for the bond accompanying said mortgage and said mortgage, which bond is for the said sum of one hundred and fifty thousand dollars principal; the object of said release was to relieve the premises described in the deed to said board from all incumbrance, and by reason thereof the title to the said board was conveyed by this defendant in fee simple free from the lien or incumberance of said mortgage.

And this defendant in further answering saith, that he is informed and believes, and therefore admits the application to the supreme court of the State of New Jersey by Charles Siedler, Alexander Bonnell and Peter Henderson, three residents and tax-payers of the county of Hudson, for and the granting of a writ of certiorari to the said Board of Chosen Freeholders, to send up to said supreme court for review the said resolutions and all other matters concerning the same, so far as the same remained before said board, which application was made
49 and the said writ granted on the twenty-seventh day of December, A. D. eighteen hundred and seventy-six, but after the said deed was delivered by this defendant to said board, and the bonds, therefore, delivered as aforesaid to this defendant.

And this defendant in further answering saith, that he is informed and believes, and therefore admits, that on the twenty-second day of November, A. D. eighteen hundred and seventy-seven, the said supreme court by its final judgment ordered the proceedings and resolutions removed by the said writ into said court to be set aside, but in order that the action of such court may accurately appear, this defendant saith that the following is a copy of the final judgment as entered in said court:

New Jersey supreme court, November term, 1877.

CHARLES SEIDLER ET AL.
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF Hudson Co. } Or. certiorari.

The court having heard the arguments of counsel and inspected the proceedings and resolutions removed by the writ in the cause, and duly considered the reasons filed, it is ordered that said proceedings
50 and resolutions be set aside with costs to prosecutors, together with all necessary disburs'ments for printing, &c.

Entered November 22d, 1877, on motion of Wm. Brinkerhoff, att'y.

And this defendant in further answering saith, that the said writ of certiorari was allowed as aforesaid after the deed and bonds were delivered and the purchase closed as aforesaid; that the said writ removed into said supreme court, as this defendant is informed and believes, only such proceedings as took place before said board on the fourteenth day of December, A. D. eighteen hundred and seventy-six, when said resolutions were passed, and such proceedings as remained before said board preliminary or previous thereto; also, that none of the transactions between said board and this defendant, subsequent to the said fourteenth day of December, A. D. eighteen hundred and seventy-six, were removed by said writ unto said supreme court, and were not within the record for adjudication before said court.

This defendant also saith, that he was not a party before the said supreme court in the said certiorari suit, and is in no way bound or concluded by the judgment of the court therein; that the only parties in said suit were the prosecutors and the board aforesaid, and the
51 court could not, as the defendant is informed and believes, have legally passed upon and determined and did not pass upon and determine the validity of the said deed and bonds.

This defendant also saith, that he is informed and believes that the judgment of the said supreme court aforesaid does not only not bind or conclude him, but that the opinion of the said supreme court on the questions of law upon which the case was decided is of no binding force in this honorable court; that the said case was decided by a part only of the said supreme court known as the branch court; which then consisted of but three of the nine justices composing the whole court; also that the said supreme court is not the court of the last resort in the State of New Jersey, said court of last resort being the court of errors and appeals into which said case could have been removed by said board, if so disposed.

This defendant also saith, that after the execution in and delivering of the said deed and bonds, and after the said resolutions were executed or carried out as aforesaid, the setting aside of said resolutions and the proceedings preliminary thereto as aforesaid could not legally effect the purchase as closed up in accordance therewith.

52 This defendant in further answering denies that it was the duty of the said board after the adjud*d*ication of said supreme court to have reconveyed the said lands to this defendant, and for this defendant to have destroyed or returned the bonds remaining in his hands, or for the said Harrison to have destroyed or returned his said bond.

This defendant further*ing* answering admits that the said board has not tendered this defendant a deed to re-vest the title to said lands in this defendant, and has held the said lands and enjoyed the benefit thereof ever since the delivery of the said deed.

This defendant in further answering admits and saith that on the thirteenth day of March, A. D. eighteen hundred & seventy-eight, he did commence an action in the circuit court of the United States for the district of New Jersey, against the said board for the recovery of the amount of the bonds remaining in his hands as aforesaid with the interest thereon, and that notwithstanding the said adjudication of the supreme court, he intends to prosecute said action with the leave of this honorable court, in order to recover the amount of said bonds and interest.

This defendant also admits that the said bonds were made payable to this defendant, but according to the terms as hereintofore set forth
53 in the copy thereof, and as to the legal effect, this defendant also saith that only two of the said bonds are now in the hands of this

defendant, and that since the twenty-second day of December, A. D. eighteen hundred and seventy-six the other bond has not been in defendant's hands, but in the hands of said Harrison, assigned to him as aforesaid.

This defendant in further answering denies that said resolutions and purchase are illegal and that the adjudication of the supreme court aforehas invalidated the said purchase, and that the said bonds are of no effect, and this defendant saith that the said board had full power and authority to pass said resolutions to make said purchase, to issue said bonds, and has full power and authority to pay for said bonds or purchase money for said lands, and that it is the duty of said board so to do. This defendant also insists that said bonds are all legal and valid, also that all the proceeding' of the board in reference to said purchase and the consummation thereof by delivering of the deed and bonds as aforesaid are legal and valid, and that this defendant is entitled to recover from the said board the full amount of the bonds now held by him and interest thereon, and that there should be a like recovery on the other bond held by said Harrison.

54 This defendant also saith that there is nothing in the description of the lands contained in the resolutions that can legally or equitably invalidate the said transaction of purchase, and that the said board had power to purchase said lands, in the manner provided in said resolutions, both by the description therein contained, and in the way in which the purchase was consummated.

This defendant further denies that it was or is his duty to deliver up his said bonds to the said board to be cancelled, and to accept a reconveyance of said lands and premises.

He also saith and insists that it is the duty of said board to retain said title to said lands and premises, and to pay said bonds and the interest thereon.

This defendant also denies that it is the duty of said board to seek the aid of any court to compel a delivery up of said bonds, and an acceptance by this defendant of a reconveyance of said bonds and premises. This denial is based upon the insistment on his part that said purchase was, and is, valid and legal, and should be sustained by this honorable court. Whether the said board has any intention to keep the possession of said lands and premises for the purpose of becoming estopped from pleading that the action of said board was ultra vires

55 or not, this defendant is not informed; he saith, however, that there is no understanding directly or indirectly with said board to that effect; that there has not been and is not any complicity between said board and this defendant in any way in regard to its action or inaction in relation thereto.

And this defendant submits to this honorable court, that all and every the matters in the said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainants are not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defense as if he had demurred to the said complainant's bill.

And this defendant denies that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not her'in and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct.

56 And this defendant, further*ing* answering, denies that the said complainants are entitled to the relief, or any part thereof, in the said complaint demanded.

And this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to the said bill of complaint.

And this defendant prays leave to be dismissed with his reasonable costs and charges in this belief most wrongfully sustained.

MAHLON B. CRAMPTON.

MUIRHEID & MCGEE,
Sol's of Def't Mahlon B. Crampton.
J. D. BEDLE,
Of Counsel with Defendant Mahlon B. Crampton.

57 UNITED STATES OF AMERICA,
District of New Jersey, ss :

Mahlon B. Crampton, being duly sworn, does depose and say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

MAHLON B. CRAMPTON.

Subscribed and sworn to before me, at Jersey City, this 17th May, 1878.

[L. S.] WM. PINTARD,
Notary Public, N. J.

58 *Schedule.*

Whereas remonstrances have been presented by property owners and citizens of this county to this board against the expenditure of any more money in repairing or making additions to the old court house of this county, and suggesting that the relief demanded by the grand juries and by the county officers and courts of this county shall be found in a new court house.

And whereas the said remonstrance and the whole matter of the want of a new court house in this county, with county offices and accommodations for grand juries, has been referred to a committee of this board, who have reported to this board that they find it true that the grand jury and witnesses have not proper accommodations; that the witnesses are obliged to stand in the hallway of the old court house, where it is dark, cold and damp, awaiting their turn to be heard; that the old building has not the necessary accommodation for the county offices, and that the room in which is held the quarter sessions is almost unindurable, and that it would cost a large sum of money to make addition to the old buildings sufficient for the purposes of the county, and that even then a proper available space and light could not be obtained.

59 And whereas the said committee also reported that it would be wise to procure suitable ground upon which could be erected a new court house; and that they have considered different locations, and have concluded that the property of Mr. Mahlon Crampton, at the corner of Newark and Palisade avenues, would be altogether the best for the site of a new court house, being easy of access from all parts of the county and very central; and that the amount of land required for a new court house and public offices of this county can be obtained

cheap, and that portions of said land of Mr. Mahlon B. Crampton, at the corner of Newark and Palisade avenues, lying north of the southerly line of Waldo avenue, if the same were produced across the Crampton property, can be obtained for the sum of two thousand dollars for every twenty-five hundred square feet, and recommending the purchase thereof at that price: therefore be it

Resolved, that after mature consideration, this board has come to the conclusion that further accommodations than are now possessed by the county are necessary for the proper transaction of the public business, and the security and preservation of the public records of this county; that any attempt to enlarge or adapt the present court house to
60 meet the pressing wants of the county would be a wasteful expenditure of money, and that the time has full' arrived when the public necessities of the county of Hudson requires the erection of a new court house and offices for the preservation of the public records of the county, and proper and convenient offices for the sheriff, county clerk, register, surrogate and prosecutor of the pleas, and accommodations for the courts, the grand and petit juries, and witnesses and meetings and business of the Board of Chosen Freeholders, and of the board of vital statistics, and that the county of Hudson does not at the present time own any sufficient quantity of land upon which to erect any such new court house offices, and that it is the duty of this board at this time to procure such land as may be needed for such purpose;

Resolved, That the property of Mr. Mahlon B. Crampton, as stated and set forth in the report of the committee of this board in this matter, is the best and most convenient location, and that the price for which the same is offered by said Mahlon B. Crampton is, in the judgment of this board, very cheap.

Resolved, That it is the judgment of this board that so much of the lands offered by said Crampton as are needed for the use and convenience of the county for a site on which to erect a new court
61 house and rooms and offices for the safe keeping and preservation of the public records, and for the convenience of the public and accommodation of the courts and juries and witnesses attending upon the same, and for the meeting of the grand jury and witnesses requested or desiring to appear before the same, and for the sheriff, county clerk, and prosecuting attorney, the surrogate, register, and meetings and business of the board of freeholders, and of the board of health, as lies north of the southerly line of Waldo avenue, if the same were produced across said property as shown on a map of said property furnished to and now in possession of this board; and that the same is hereby taken and purchased at the price of two thousand dollars for every twenty-five hundred square feet thereof; and that in payment for said lands, there be issued to said Crampton a bond or bonds of Hudson County, payable out of the amount appropriated and limited for the expense of the next fiscal year, said bonds to run one year from the date thereof, bearing interest at the rate of seven per cent. per annum.

Resolved, That the counsel to the board be authorized to examine the title of said Crampton to the land at the corner of Newark
62 and Palisade avenues, Jersey City, as above set forth and shown on a map now in the possession of the board, and if the same be satisfactory, that he ascertains the number of square feet contained in that portion of said lands lying north of the southerly line of Waldo avenue, if the same were produced across said property, and report the same to the county collector, who shall, provided said Crampton shall notify the county collector of his acceptance of the terms contained in

these resolutions, prepare said bonds or bond in amount equal to the amount of said land purchased and taken at the rate of two thousand dollars for every twenty-five hundred square feet thereof; and the director at large and the county collector are hereby authorized and directed to sign said bond or bonds, and affix the seal of the county thereto; and whenever the said Crampton shall furnish to said county collector a good and sufficient deed vesting the title to said lands in the Board of Chosen Freeholders of the County of Hudson, approved by the counsel of this board, the county collector shall deliver said bond or bonds to said Crampton in full payment for said lands.

63 Passed Dec. 14, 1876.

CHARLES J. ROE,
Cl'k 'quity.

Approved December 15, 1876.

D. C. HALSTED,
Director at Large.

Map of said property certified to December 16, 1876, by D. C. Halsted, director at large.

(Endorsement:) Resolution for the purchase of court-house sites, Dec. 14, 1876. C. J. Roe, cl'k. Filed May 18, 1878.

64 Circuit court of the United States for the district of New Jersey.
In equity.

BETWEEN AUGUSTUS ZABRISKIE X OTHERS, COMPL'TS,
and
MAHLON B. CRAMPTON, ANOTHER, DEF'D'TS.

The several answers of the board of chosen freeholders of the county of Hudson, one of the defendants, to the bill of complaint of Augustus Zabriskie, William W. Shippen, Francis G. Wetmore, and Stephen D. Harrison, complainants.

This defendant now and at all times hereafter reserving to itself all and all manner of benefit and advantage of exceptions to the many errors and uncertainties in the complainants' bill of complaint contained, for answer thereto or unto so much and such facts thereof as this defendant is advised is necessary and proper for it to answer unto, it answering says, that it admits that said complainants are resi-

65 dents and tax-payers in the county of Hudson, and State of New Jersey, as stated in said bill; this defendant also admits that said resolution of December the fourteenth, in the year eighteen hundred and seventy-six, was in the words stated in the said bill, and was passed and approved as stated in said bill; this defendant also admits that said Crampton filed his written acceptance of the terms of said resolution as stated in said bill, and made, executed, and delivered his said deed as and for the purposes stated in said bill.

This defendant further admits that this defendant did accept said deed as stated in said bill, and caused the same to be recorded, as in said bill set forth.

And this defendant further admits that said director at large of the county of Hudson, and the county collector, did make & deliver to said Crampton the said bonds as set forth in said bill for the purposes set forth in said bill; and this defendant admits that all said resolution has been set aside by the supreme court of the State of New Jersey and declared illegal as stated in said complainants' said bill of complaint.

And this defendant admits that said board had no right or power to pass said resolution, nor to issue said bonds, nor make said
66 purchase as prescribed by said resolution; and that the said resolution is illegal and the said bonds void, and that the said purchase is of no effect; and said defendant in further answering denies that in equity it became this defendant's duty, immediately after said adjudication of said supreme court, to have tendered to said Crampton a deed to rest in him the fee of said premises, but charges and insists that the duty was upon said Crampton to surrender the said bonds to this defendant before this defendant became bound to reconvey the said lands.

And this defendant further admits that said Mahlon B. Crampton has commenced his action in the circuit court of the United States for the district of New Jersey as stated in said complainants' said bill. And this defendant admits that said suit is brought for the purposes stated and set forth in the complainants' said bill.

And this defendant admits that it has never done anything to repudiate said purchase from said Crampton, but has allowed said lands to remain in its possession ever since the delivery and acceptance of
67 said deed, but this defendant says that while it has allowed said lands to remain in its possession, yet it has never collected any of the rents, issues, or profits thereof, nor has it exercised any acts of ownership over it, but has allowed it to remain in the exact condition in which it was at the time of the acceptance of said deed, and this defendant charges and insists that said Crampton has full knowledge of these facts concerning this defendant's possession of said lands; and this defendant charges and insists that it is not such possession as in equity will estop this defendant from maintaining its bill in equity to protect the rights of the complainants and the other tax payers of the said county of Hudson.

And this defendant further admits that the said bonds were made payable to said Crampton alone as stated in said bill of complaint.

And this defendant further answering says, that it is now ready and willing to convey said lands to said Crampton in fee simple as prayed in the complainants' said bill, and hereby tenders and offers to said Crampton a deed conveying the said lands and premises in complainants' said bill set forth to said Crampton in fee simple.

68 And this defendant denies all unlawful combination and confe'racy in said bill charged, without that there is any other matter, cause or thing in said complainants' said bill of complaint material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to maintain and prove as this honorable court shall direct, and humbly prays that the prayer of the complainants' said bill be by this honorable court granted, and this defendant be dismissed with its reasonable costs and charges in this behalf.

I. H. LIPPENCOTT,
Solicitor of and of Counsel with said Defendant, the Board of Chosen Freeholders of the County of Hudson.

69 UNITED STATES,
State of New Jersey, ss:

Edward F. McDonald, of full age, being duly sworn according to law, on his oath saith that he is the director at large of the Board of Chosen

Freeholders of the county of Hudson; that the foregoing is the answer of the Board of Chosen Freeholders of the said county of Hudson to the bill of complaint therein stated; that this deponent is authorized to sign and swear to such answer by a duly approved resolution of said Board of Chosen Freeholders, a copy of which is hereunto annexed; and this deponent saith that the facts, matters and things set forth in said answer, so far as the acts and deeds of the Board of Chosen Freeholders, the defendant, are concerned, are true, and so far as the acts and deeds of others are concerned this deponent believes them to be true.

E. F. McDONALD,
Director at Large.

Sworn and subscribed before me, at the of town Harrison, this April 29th, 1878.

EDWARD D. DEACON,
Master in Chancery in New Jersey.

70 Resolved, That the counsel of this board in the suit of Augustus Zabriskie and others against this board, in the United States circuit court, and he is hereby authorized to prepare such answer thereto as will the most fully protect the county in such matters, and to take all necessary legal steps as will effectuate said purpose, and the director at large is hereby authorized and directed in behalf of this board to sign and swear to such answer, and affix the seal of the county thereto.

STATE OF NEW JERSEY,
Hudson County, ss:

I, George B. Fielder, clerk of the Board of Chosen Freeholders of the county of Hudson, do hereby certify that the foregoing is a true and correct copy of a certain resolution as passed by said board April 18th, 1878, and approved by the hon. director at large April 22d, 1878, and as the same is on file in my office.

71 In testimony whereof I have hereunto set my hand and seal of said county this twenty-fourth day of April, A. D. 1878.

[L. S.] GEO. B. FIELDER, *Clerk.*

The answer of the defendant, the Board of Chosen Freeholders of the county of Hudson, was taken this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy-eight, before me, under the common seal of the said corporation, as by their said seal affixed appears.

[L. S.] EDWARD D. DEACON,
Master in Chancery of New Jersey.

Filed June 28, 1878.

72 *Replication.*

United States circuit court for the district of New Jersey.

BETWEEN AUGUSTUS ZABRISKIE, WILLIAM W. Shippen, Stephen D. Harrison, & Francis G. Wetmore, compl'ts,
and
MAHLON B. CRAMPTON, THE BOARD OF Chosen Freeholders of the county of Hudson, def'd'ts.

These repliants, saving & reserving to themselves all & all manner of

advantage of exception to the manifold insufficiencies of the said answers of the said defendants, for replication thereunto say that they will aver & prove their said bill to be true, certain, & sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, & insufficient to be replied unto by these repliants without that, that any other matter or thing whatsoever in the said an-
73 swers contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue, all which matters and things these repliants are & will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

PETER BENTLEY,
Sol. for & of Counsel with Complainants.

Filed July 10, 1878.

74 *Stipulation.*

Circuit court of the United States for the district of New Jersey. In equity.

BETWEEN AUGUSTUS ZABRISKIE ET ALS., compl'ts, *and* MAHLON B. CRAMPTON ET AL., DEF'TS. } On bill, &c.

It is agreed between the solicitor of the complainants and the solicitors of the defendant, Mahlon B. Crampton, that the following evidence shall be admitted and used in above cause, the truth thereof being admitted and considered as regularly proved :

1. That the resolutions annexed to the answer are correct copies of the originals.

2. That the original map referred to in the resolutions shall be produced and used (its identity being admitted), or a copy thereof.

3. That the copy of the bonds as set out in the answer is correct.

4. The allegations of the answer in regard to the transaction between Harrison and Crampton as to the taking and delivery of the bond held by Harrison, the consideration of the transaction and possession
75 of the bond are admitted the same as if duly proved.

5. The whole of the record of the suit in certiorari in the supreme court of New Jersey referred to in the bill and answer is admitted, except the evidence ; the opinion of the court therein is also admitted. It is also admitted that the decision was made by what is known as the branch of the supreme court, which consisted of three judges, out of the nine which compose the whole of the supreme court, the allegations of the answer in that respect being admitted as true ; also that the court of last resort in the State of New Jersey is the court of errors and appeals, the constitution of said State and all laws affecting the constitution and composition of said courts being admitted.

6. All statutes of the State of New Jersey, public, private, or special, in relation to the Board of Chosen Freeholders of the county of Hudson, or in anywise affecting the same, and the office of director at large of the county of Hudson, are admitted.

PETER BENTLEY,
Sol'r for Compl'ts.
MUIRHEID & McGEE,
Sol's for Crampton.

76 The above statement of facts admitted and agreed to by the defendant, the Board of Chosen Freeholders of the county of Hudson.

J. H. LIPPENCOTT,
Sol'r of the said Board of Chosen Freeholders.

Filed July 19, 1878.

77 NEW JERSEY, *ss*:

The State of New Jersey to the Board of Chosen Freeholders of the County of Hudson, greeting:

We being willing for certain reasons to be certified of certain preambles and resolutions adopted by the Board of Chosen Freeholders of the County of Hudson, on the fourteenth day of December, eighteen hundred and seventy-six, of which the following is a true copy, to wit:

COURT HOUSE SITE.

Whereas remonstrances have been presented by property owners and citizens of this county, to this board, against the expenditure of any more money in repairing or making additions to the old court house of this county, and suggesting that the relief demanded by the grand juries and by the county officers and courts of the county shall be found in a new court house;

And whereas the said remonstrances, and the whole matter of the want of a new court house in this county, with county offices and accommodations for grand juries, has been referred to a committee of this board, who have reported to this board that they find it true that the grand jury and witnesses have not proper accommodations; that the witnesses are obliged to stand in the hallway of the old court house, where it is dark, cold and damp, awaiting their turn to be heard; that the old building has not the necessary accommodations for the county offices, and that the room in which is held the quarter sessions is almost unendurable, and that it would cost a large sum of money to make additions to the old building, sufficient to the purposes of the
78 county, and that even then a proper available space and light could not be obtained;

And whereas the said committee also reported that it would be wise to provide suitable grounds upon which could be erected a new court house, and that they have considered different locations, and have concluded that the property of Mr. Mahlon Crampton, at the corner of Newark and Palisade avenues, would be altogether the best for a site for a new court house, being easy of access from all parts of the county, and very central, and that the amount of land required for a new court house and public offices of this county can be obtained cheap, and that portions of said land of Mr. Mahlon Crampton at the corner of Newark and Palisade avenues, lying north of the southerly line of Waldo avenue, if the same were produced across the Crampton property, can be obtained for the sum of two thousand dollars for every twenty-five hundred square feet, and recommending the purchase thereof at that price; therefore, be it

Resolved, That, after mature consideration, this board have come to the conclusion that further accommodations than are now possessed by the county are necessary for the proper transaction of the public business and the security and preservation of the public records of the

county: that any attempt to enlarge or adapt the present court house to meet the pressing wants of the county would be a wasteful expenditure of public money; and that the time has fully arrived when the public necessities of the county of Hudson requires the erection of a new court house and offices for the preservation of the public records of the county, and proper and convenient offices for the sheriff, county clerk, register, surrogate and prosecutor of the pleas, and accommodations for the courts, the grand and petit juries and witnesses, and meetings and business of the board of chosen freeholders and of the board of vital statistics, and that the county of Hudson does not, at the
79 present time, own any sufficient quantity of land upon which to erect any such new court house offices, and that it is the duty of this board, at this time, to procure such land as may be needed for such purposes.

Resolved, That the property of Mr. Mahlon B. Crampton, as stated and set forth in the report of the committee in this matter, is the best and most convenient location, and that the price for which the same is offered by said Mahlon B. Crampton is, in the judgment of this board, very cheap.

Resolved, That in the judgment of this board, that so much of the lands offered by said Crampton, as are needed for the use and convenience of the county for a site on which to erect a new court house, and rooms and offices for the safe keeping and preservation of the public records, and for the convenience of the public, and accommodation of the courts and juries and witnesses attending upon the same, and for the meetings of the grand jury and witnesses requested or desiring to attend upon the same, and for the sheriff, county clerk and prosecuting attorney, the surrogate, register, and meetings and business of the board of freeholders, and of the board of health, as lies north of the southerly line of Waldo avenue, if the same were produced across said property, as shown on a map of said property, furnished to and now in possession of this board.

And that the same is hereby taken and purchased at the price of two thousand dollars for every twenty-five hundred square feet thereof, and that in payment for said lands there be issued to said Crampton a bond or bonds of the county of Hudson, payable out of the amount appropriated and limited for the expense of the next fiscal year; said bonds to run one year from the date thereof, and bearing interest at the rate of seven per cent. per annum.

Resolved, That the counsel to the board be authorized to ex-
80 amine the title of said Crampton to the land at the corner of Newark and Palisade avenues, Jersey City, as above set forth and shown on a map now in the possession of this board; and if the same be satisfactory, that he ascertain the number of square feet contained in that portion of said lands lying north of the southerly line of Waldo avenue, if the same were produced across said property, and report the same to the county collector, who shall, provided said Crampton shall notify the county clerk of his acceptance of the terms contained in these resolutions, prepare said bond or bonds, in amounts equal to the amount of said lands purchased and taken at the rate of two thousand dollars for every twenty-five hundred square feet thereof.

And the director-at-large and county collector are hereby authorized and directed to sign said bond or bonds and affix the seal of the county thereto.

And whenever the said Crampton shall furnish the county collector a good and sufficient deed vesting the title to said lands in the board of

chosen freeholders of the county of Hudson, approved by the counsel of this board, the county collector shall deliver such bond or bonds to said Crampton in full payment for said lands.

And also of the map in said preambles and resolutions referred to, and all other acts and proceedings of the said board of chosen freeholders of the county of Hudson, relating to the said resolutions, and all acts done thereunder, together with all things touching and concerning the same, as the same remain before you, in your possession, or under your custody or control, by whatever names the same may have been taken, or done, or called, to our supreme court of judicature, to be held at Trenton on the fourth Tuesday of February next, you certify and send, together with this writ, that therein may be done what of right, and according to the constitution and laws of this State, ought to be done.

81 Witness Mercer Beasley, esquire, chief justice of our supreme court aforesaid, at Trenton, this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and seventy-six.

BENJ. F. LEE, *Clerk.*

WM. BRINKERHOFF,
Attorney.

82 New Jersey supreme court.

THE STATE (CHARLES SIEDLER, PETER HENderson, and Alexander Bonnell), prosecutors,
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF THE county of Hudson.

On certiorari to remove resolutions, &c.

Ret'ble Feb'y term, 1877.

WM. BRINKERHOFF,
Attorney.

I allow this writ. Let it be sealed.
Dec. 27th, 1876.

M. M. KNAPP,
Justice Supreme Court.

83 New Jersey supreme court.

THE STATE (CHARLES SIEDLER, ET ALS., prosecutors),
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF THE County of Hudson.

On certiorari to remove resolutions, &c.

A writ of certiorari having been allowed in the above cause, directed to the Board of Chosen Freeholders of the county of Hudson, to bring before this court certain preambles and resolutions of which the following is a true copy, to wit:

(Here follows a copy of the preambles and resolutions.)

It is ordered that all further proceeding by the said The Board of Chosen Freeholders of the county of Hudson, relating to the consum-

mation of such purchase, be, and the same are hereby, stayed, and that the county collector of Hudson County shall not pay or cause to be paid any bonds relating to the matters in said resolutions until the further order of this court.

On motion of—

WM. BRINKERHOFF,
Attorney for the Prosecutors.

I allow the above order.

M. M. KNAPP, *J. S. C.*

Dec. 27, 1876.
(Served on director, &c.)

84 The preamble and resolutions, the map therein referred to, and all other acts and proceedings of the said The Board of Chosen Freeholders of the county of Hudson, relating to the said resolutions and acts done thereunder, and all things touching and concerning the same, whereof mention is made, we do hereby certify and send under our seal on the schedule hereto annexed, as within we are commanded.

Witness the seal of the said county, and the director-at-large of said board, and the clerk thereof, this 26th day of February, A. D. 1877.

D. C. HALSTED,
Director at-Large.

CHAS. J. ROE,
Clerk as aforesaid.

At a regular meeting of the Board of Chosen Freeholders of the county of Hudson, held at the court house on Thursday, January 6th, 1876, a presentment from the grand jury was read, and on motion of Mr. O'Reilly ordered on the minutes at length, as follows:

To the court of oyer and terminer and general jail delivery, December term, A. D. 1875.

The grand jury of the present term desire to call the attention of the court to the accommodation provided by the county for the sittings of the grand jury.

The room in which the sessions of the grand jury are held is without any means of ventilation whatever.

85 The witness room is ill-arranged and of insufficient size to accommodate the witnesses summoned before the grand jury. It should be larger, more comfortably fitted up, and a separate room provided for ladies.

An entrance should be provided for the grand jury to their own room, separate from the general entrance, so that they would not be obliged to pass through the crowd of witnesses always gathered around the witness room.

W. W. SHIPPEN, *Foreman.*

I do hereby certify the foregoing to be a true copy of the original presentment, as the same is filed in my office.

JAMES M. BRANN, *Clerk.*

After the reading, on motion of Mr. Stuhr, the matter of the communication was referred to the committee on public grounds, &c.

At the regular stated meeting of the board, held April 20th, 1876, at the freeholders' office, the following proceedings were had:

REGULAR MEETING, *April 20th*, 1876.

Minutes of a regular stated meeting of the board of chosen freeholders of the county of Hudson, held at the freeholders' office, next the court-house, on Thursday, April 20th, 1876.

Present, Director-at-Large Halsted, Freeholders Gibson, Coykendall, Harper, Cronham, Freeman, Heritage, Cumming, Wickham, Mullany, Stuhr, Cook, O'Reilly, and Dwyer—13.

86 Absent, Freeholders McPhillips, Meinken, and Young—3.

The director reported that the usual freeholders' room was occupied by the grand jury, and that both court rooms were occupied, and therefore there was no room in this which board could meet.

Mr. Cook then moved that the board adjourn to Saturday, April 22d, 1876, at ten o'clock a. m., which was adopted, and the board adjourned.

CHAS. J. ROE, *Clerk.*

At a regular stated meeting of the board, held April 22d, 1876.

Report of the committee on public grounds, &c.

To the honorable The Board of Chosen Freeholders:

GENTLEMEN: The undersigned, members of your committee on public grounds, &c., to which was referred at the meeting held January 6th, 1876, the presentment of the grand jury, as follows, viz:

To the court of oyer and terminer and general jail delivery, December term, A. D. 1875:

The grand jury of the present term desire to call the attention of the court to the accommodation provided by the county for the sittings of the grand jury. The room in which the sessions of the grand jury are held is without any means of ventilation whatever. The witness room is ill arranged, and of insufficient size to accommodate the witnesses summoned before the grand jury. It should be larger, more comfortably fitted up, and a separate room provided for ladies.

87 An entrance should be provided for the grand jury to their own room, separate from the general entrance, so that they would not be obliged to pass through the crowd of witnesses always gathered around the witness room.

W. W. SHIPPEN, *Foreman.*

I do hereby certify the foregoing to be a true copy of the original presentment, as the same is filed in my office.

JAMES M. BRANN, *Clerk.*

After the reading, on motion of Mr. Stuhr, the matter of the communication was referred to the committee on public grounds, &c., who have considered fully and carefully the subject referred to them, but they do not know of any way by which permanent or suitable rooms can be furnished for the use of the grand jury in the present building without great expense, and they do not feel justified in recommending any large outlay in or about the present building.

We do not deny that the presentment is a just rebuke for the authorities of the county for the accommodations furnished, but the same complaint has been made with equal force by nearly every department of the public service during many years past.

And the Board of Chosen Freeholders has done what it could for their relief, from time to time, as the county has grown in population and the business of the departments has increased, till the present building, with alterations, repairs, and additions has cost so much that it would have been far cheaper to have put up a new building, better adapted for county purposes, several years ago. The county business has already outgrown the limits of the county court-house, and there are now no rooms of sufficient capacity. The main hall is often so dark that
88 people can hardly recognize each other within it, and into this dark and damp hall are crowded the witnesses who are in attendance upon the grand jury.

After the small witness room is filled, the accommodations are such that no respectable female would willingly crowd through the jury-room to make a complaint. And yet there can be no entrance to the surrogate, sheriff, prosecuting attorney, county clerk, or register's office except through this hall. The lower story of the building is damp, and the whole arrangement is unhealthy.

Your committee foresee the near approach of the time, probably within five years, when the jail will be found entirely inadequate for the increased population, and the present court-house will have to be connected with the jail building, and used for court of sessions and jail purposes, and a new court-house will have to be erected, in which the circuit court may be accommodated, and the valuable records of the county be safely kept, as well as increased room furnished for the departments. If this is not done, then a special building will have to be erected to accommodate the sheriff, surrogate, and register and preserve the records of their offices. The cost of such a structure would be nearly as great as the cost of a reasonable court-house, and, even after that, a new court-house would have to be built eventually.

We would, therefore, in view of all circumstances, respectfully recommend that a gradual preparation be made for the erection, at the proper time in the future, of a plain, economical, but substantial court-house, and that no money beyond needed repairs be expended upon the present building as a county court-house.

We would respectfully recommend that an investigation be entered into, with a view to procuring suitable grounds for a new building, while ground, properly located, can be had at the present very low prices.

89 All of which is respectfully submitted.

J. M. GIBSON,
G. T. FREEMAN,
A. HERITAGE,
P. McPHILLIPS,
Committee at Snake Hill, &c.

The report having been read, and ordered on the minutes, was adopted as the sense of board.

At the regular stated meeting of the board, held May 18th, 1876, at the court-house.

HUDSON COUNTY, *May 18th*, 1876.

The following communication from the director-at-large was read, received, and ordered on file, together with the presentment of the grand jury heretofore published in the official papers concerning want of proper accommodations for grand juries:

To the honorable the Board of Chosen Freeholders:

GENTLEMEN: I have to call the attention of your board to a certified copy of a presentment of the grand jury of Hudson County, April term, 1876, to the court of oyer and terminer and general jail delivery, desiring to present to the court the total unfitness of the room assigned to them by your board in which to hold their deliberations. The honorable the grand jury, after fully stating their reasons for a desired change, conclude in these words:

"The grand jury is of the opinion that the interests of the county demand that some provisions should be made for a proper place
90 in which the grand jury can transact their business according to law, and to this end call the attention of the court to the matter."

I have to inform your board that a former grand jury made a like presentment, in the year 1875 to the court, and it seems to be imperative that this subject should have your immediate and effective consideration.

The court business of the county is rapidly increasing and has already assumed proportions requiring our investigations as to the propriety of enlarging the present court-house building, giving additional room for the several departments of the county officials, a better ventilation to the rooms in which the courts are holden, and a more comfortable privacy to the many witnesses who are frequently necessarily detained, for service, upon call, besides a better arrangement for the accommodation of the grand jury and its witnesses.

Very respectfully,

D. C. HALSTED,
Director-at-Large.

At a regular adjourned stated meeting of the board, held June 2, 1876, at the court-house, the following report from committee on public grounds, &c., was read and received:

Report of committee on public grounds, &c.

To the hon. the Board of Chosen Freeholders of Hudson County:

GENTLEMEN: The undersigned committee on public grounds, jail, and finance would respectfully report to your honorable body as follows:

91 That they have met and considered all matters heretofore referred to them.

In the matter of the appropriation necessary for the uses and purposes of carrying out the duties of this committee, we would recommend that the sum of $75,000 be set apart for all purposes of any kind—the control over which is in your committee—including board of prisoners at county jail, morgue fees, burials, &c., coal gas, water, stationery for committee, and for masons, carpenters, plumbers and painters' repairs, and also for clothing, medicines, and the numerous items of expenditures which necessarily arise. This appropriation, while including a proposed extension to the jail yard, does not include any sum for the building of a new court-house, or an addition to the present one, that being a subject which your committee would prefer leaving to your discretion, and have such an appropriation made by your honorable body, and, by you, added to the tax levy. While your committee are unprepared to report intelligently on the same, they feel that some action should be taken. Several grand juries have presented the board for

not providing what they deemed proper accommodations, and it is the province of the board to know whether our people can endure the needful expenditure. Your committee would recommend that they be authorized to advertise for bids for doing the work of alteration of the jail yard; such bids to be received by the board at a proper season.

At a regular stated meeting of the board, held June 15, 1876, the committee on judiciary reported:

The very important matter suggested by the director in a communication to your honorable body at a meeting on the 23d inst., referring to the inadequate accommodations for the courts, juries and
92 county offices, which the present court-house affords, is one that we propose to investigate at length; obtaining, if possible, the views and opinions of not only the persons so discommoded, but of such of our influential citizens and tax-payers as may be induced to consider the subject, that we may the better be prepared to report such recommendations for relief as will revert to the best interests of the county, and give the greatest satisfaction to the people at large, as well as those having business with the courts or offices about the building.

Your committee desires to recommend the adoption of the resolutions accompanying this report.

RAMON M. COOK,
JAS. H. STARTUP,
WM. COX,
Committee on Judiciary.

The report of the committee was received, and, on motion, the accompanying resolutions were laid over to order of resolutions.

At a regular stated meeting of the board, held July 6th, 1876, committee on judiciary reported as follows:

To the honorable the director and the Board of Chosen Freeholders:

GENTLEMEN: Your committee on judiciary, to whom was referred the matter of inadequate accommodations afforded by the court-house building, as presented by successive grand juries, and the subject of special mention by the director-at-large, in a communication to the board, June 2d, beg leave to report:

93 That in accordance with the recommendation of the director, they have interviewed the honorable court and the several county officers whose business requires room to a considerable extent, as well as facilities for the care and protection of valuable records (some of which have been shown to the committee in an advanced state of decay, by reason of the dampness of the building), and also have, wherever feasible, presented the subject to a number of prominent citizens, that their views might be ascertained upon so important a matter.

In every instance, those who are in a position to realize the condition and the emergency, have been quite positive, in their judgment, as to the impropriety of attempting to enlarge the present building, or to expend any considerable amount upon it for alterations.

To enlarge would seem to be out of the question, by reason of limited space; to further alter or reconstruct is equally impossible, for the building has already been altered and built over, until no one is accommodated or satisfied.

In this dilemma, your committee do not feel justified in making any recommendations, but would prefer to report the opinions of these, and

refer the board to a report of a like committee upon the same subject, presented to the last board at the final meeting, which would seem to cover the whole case, as follows:

(Here follows report of committee on public grounds, of April 27, 1876, describing the difficulties under which the committee labored, and showing and recommending the absolute necessity of a new court-house; also recommending purchase of a site for court-house; also presenting the presentment of the grand jury, Dec. term, 1875, on the subject.)

The committee conclude as follows:

94 One thing at least is certain; something must be done or the citizens of Hudson County may, with justice, complain of the inaction of the board in the protection of public interests. The subject should be taken into consideration by the whole board at once, the committee declining to take upon themselves the responsibility of any recommendations for relief.

All of which is respectfully presented.

R. M. COOK,
JAMES H. STARTUP,
WM. COX,
Committee on Judiciary.

JERSEY CITY, *July* 6, 1876.

Mr. Startup moved that the report be received and ordered filed.

Pending the motion, by consent, Mr. Hall introduced the following resolution, which was read:

"Resolved, That the clerk be instructed to advertise for offers from property owners, with maps and price, to be handed in to this board at its next meeting, of any property suitable for a site for a new court-house, it being understood that the board shall not be under any obligation to accept any of them."

Question having been taken, Mr. Hall's resolution was adopted by the following vote, on yeas and nays, the same having been ordered and taken:

Yeas—Freeholders Hall, Farrier, McPhillips, Blackwell, McLaughlin Feiler, Ginocchio, Speer, Frost, Startup, Smith, Curran, Cox, Johnson —14.

Nays—Freeholders Harper and Cook—2.

The report of the committee was then ordered filed.

95 At a regular stated meeting of the board, held July 27, 1876, bids for sites for court house were received and laid on the desk of the director-at-large.

ADJOURNED REGULAR MEETING, *August* 3, 1876.

Minutes of an adjourned regular stated meeting of the Board of Chosen Freeholders of the county of Hudson, held at the county court-house, on Thursday, August 3d, 1876.

Present, Director-at-large Halsted, Freeholders Hall, Farrier, Harper, Blackwell, McLaughlin, Ginocchio, Frost, Startup, Curran, Cook, Cox, Johnson—12.

Absent, Freeholders McPhillips, Feiler, Speer, Smith—4.

The clerk reported two more bids received for sites for court-house, which were laid on the director's desk, with the four received at last meeting.

The minutes of last meeting of July 27, 1876, were partly read, and, on motion of Mr. Cook, reading was suspended and dispensed with until said minutes be printed.

The matter of bids for sites for court-house was taken up, and the director explained the law in relation to said purchase, if voted to be made.

Mr. Farrier moved that said bids be opened and read.

Adopted as follows, on yeas and nays, the same having been ordered and taken:

Yeas—All the members present—12 in number.

96 Absent—Freeholders McPhillips, Feiler, Speer, Smith—4.

The bids were opened and read as follows:

No. 1.—G. A. Toffey, plot on Tonnele and Garrison avenues, 138x381 feet, $2,500 per city lot, 2,500 square feet.

No. 2.—G. P. Howell, $8\frac{18}{100}$ city lots, next east of present court-house (with houses), $40,000.

No. 3.—S. Garrabrant, 53 lots corner of Baldwin and Montgomery avenues, at $3,250 per lot of 2,500 square feet.

No. 4.—Crampton, Harrison estate, what may be needed at $1.15 per square foot, without injury to adjacent property.

No. 5.—G. P. Howell, adjacent to present court-house, $20,000 for part or $40,000 for all.

No. 6.—24 lots, Prospect street and Reservoir and Webster avenues, for $48,000 with three dwellings thereon.

After the reading, the following resolution was read, offered by Mr. Startup:

"Resolved, That when this board adjourn it be to meet on Thursday, August 10th inst., at 2 o'clock p. m., for the purpose of taking into consideration the offers made to this board of property for a site for a new court-house, and also for the purpose of considering and determining the question of the building a new court-house, and of providing additional accommodations for the county clerk, surrogate, sheriff, register, and other county officers, and of the purchase of land therefor."

An amendment was offered and accepted that the opinion of

97 the counsel be obtained as to the authority of the board to purchase, and how the same is to be paid for. After which the resolution, as amended, was adopted by the following vote, on yeas and nays, the same having been ordered and taken:

Yeas—All the members present—12 in number.

Absent—Freeholders McPhillips, Speer, Feiler, and Smith.

At a regular adjourned stated meeting of the board, held August 10th, 1876:

On motion, the opinion of the counsel on the question of purchase of sites, now in the clerk's charge, was taken up and read, being as follows:

Report of counsel on purchase of sites.

To the honorable the Board of Chosen Freeholders of the County of Hudson:

GENTLEMEN: By resolution passed at your last meeting, and approved by the director-at-large, I am requested to furnish an opinion to your body as to the authority of the board to purchase a site for a new court-house.

In reply, I would say, that if in the opinion of the board it is neces-

sary for the public purposes of the county of Hudson to erect a new court-house, and that the present site is not suitable, convenient or sufficient for that purpose, or that a new court-house should be erected elsewhere, then in that case your board have the clear and undoubted authority to purchase an entirely new site; or, by purchase, add lands to the present site, sufficient and adequate for the purposes aforesaid.

98 By the second section of the act entitled, "An act to incorporate the Chosen Freeholders in their respective counties of the State," revision approved April 16, 1846, and which section is in full force and effect, it is provided that "The said Board of Chosen Freeholders in and for their respective counties, and their successors, shall be able and capable to acquire, purchase, secure, have and hold any lands, tenements, hereditaments, goods and chattels, in trust, for the use of their said counties respectively, and for such other uses as are or may be assigned by law."

Under this section, the board have power to purchase lands on which to erect and build a new court-house, whenever in the judgment of the board a necessity arises for such purchase. This power is expressly granted by the second section of this act.

The statute is clear as to the power of this board in the matter, and the only pre requisite to such purchase is that your board should pass a fair and candid judgment on the necessity of the purchase.

By the fourth section of the same act, it is made the duty of the board to vote and grant and raise money for various purposes therein enumerated, among others those of building, purchasing or repairing jails, court-houses, &c.

By this section, all appropriations made by this board, in a general way, for taxes to be levied, are made for all the purposes mentioned in this section.

If the latter section stood alone, there would exist, of necessity, the inferred power to purchase lands on which to build court-houses, and the power would exist in the board, just so often as, in the exercise of good judgment, the necessity demanded it.

99 But the power is not inferred—it is express. It is the duty of the board to erect court-houses. The duty and the power is express.

The board have authority to purchase lands for such purposes. The authority is granted in express language, and does not admit of any doubt whatever.

The next question submitted to me is this: That if the purchase be made, how are the lands purchased to be paid for?

This question, it seems to me, has not yet assumed such shape as to require legal advice. It is one which addresses itself to the good judgment of the finance committee, or some committee of ways and means of your body.

Generally speaking, the purchase money must be paid out of tax appropriation for county purposes, of the present or next fiscal year, always remembering that the statute of 1876 prevents your board from exceeding, in disbursements and obligations incurred, the appropriation. I do not think it could be paid for out of the appropriation for the fiscal year commencing December 1, 1875, and ending December 1, 1876, for the reason that other and present necessities of the county will require much of the appropriation yet unexpended, although this is a question for the good judgment of your body.

If the $200,000 worth of temporary loan bonds, now due, are funded,

under the statute of last winter, it will leave about $890,000, including the appropriation for the next fiscal year, commencing December 1, 1876, and ending December 1, 1877, out of which, by loan or by collection of taxes, your board must meet the county expenses, and pay for whatever bonds your board may purchase for the purposes aforesaid.

It would be legal for your board to pay, for lands purchased, out of next year's appropriation, and to make such provision now for
100 that purpose; either to pay it out of moneys collected from the tax appropriation of the fiscal year of December 1, 1876, to December 1, 1877, or by issuing a temporary loan bond to the seller or vendor for the amount of purchase money, to be paid out of the tax appropriation of such fiscal year aforesaid; but, of course, this purchase money or bond, together with the other expenses and obligations of the county, voted for in that year, must not be allowed to exceed the amount appropriated, unless the legislature should at its next session intervene, by some act, for that purpose.

There are other plans and means which suggest themselves to me at this time, but I deem it proper to say that it is a question which addresses itself to the good judgment of the board, or, more properly, some committee thereof, to devise and present some definite, feasible plan for doing this, if your purchase be made, and in this I will cheerfully aid and assist. With these conclusions,

I am yours, respectfully,

J. H. LIPPINCOTT,
Counsel of Board.

Mr. Frost presented a bid for site for court-house, with plans, from J. M. Jones.

Motion was made that said bid be read. Adopted as follows, on yeas and nays, the same having been ordered and taken:

Yeas—All the members present, 14 in number.

Nays—None. Absent, freeholders Speer and Smith.

Said bid was then read, being for a tract of land southeast corner Sipp and Bergen avenues, containing about two acres, for $50,000.

The bids presented at last meeting, then read and laid over,
101 were again read. From G. P. Howell, M. B. Crampton, G. E. Toffey, and S. Garrabrant. After which Mr. Curran offered the following preamble and resolutions, which were read:

"Resolved, That, after mature consideration, this board has come to the conclusion that further accommodations than are now possessed by the county are necessary for the convenient transaction of the public business and the security and preservation of the public records; that any attempt to enlarge or adapt the present court-house building to meet the pressing wants of the county would be a wasteful expenditure of the public money; and that the time has arrived when the public necessities requires the erection of a new court-house and offices for the preservation of the public records, and convenient offices for the sheriff, county clerk, register, surrogate, and prosecuting attorney, and accommodations for the courts, the grand and petit juries and witnesses, and the meetings and business of the board of freeholders, and of the board of health, and that it is the duty of this board at this time to procure such lands as may be needed for such purpose.

"Resolved, That from among the offers of property made to this board, pursuant to advertisement or invitation to property owners to furnish such offers, inserted in certain of the newspapers published in this county, the offer received from M. B. Crampton is considered to be

the most advantageous to the county, as being the best and most convenient location at a fair price, and that the offer of said Crampton of a part of his property at the corner of Newark and Palisade avenues, Jersey City, be, and the same is hereby, accepted at the price named, of one dollar and fifteen cents per square foot.

"Resolved, That it is the judgment of this board that so much of the lands offered by said Crampton as are needed for the use and convenience of the county for a site on which to erect a new court house and rooms and offices for the safe-keeping and preservation of the
102 public records, and for the convenience of the public and accommodation of the courts and juries, and witnesses attending upon the same, and for the meetings of the grand jury, and witnesses requested or desiring to appear before the same, and convenient offices for the sheriff, county clerk, and prosecuting attorney, the surrogate, register, and meetings and business of the board of freeholders, and of the board of health, as lies north of the southerly line of Waldo avenue, if the same were produced across said property, as shown on a map of said property furnished to and now in the possession of this board, and that the same is hereby taken and purchased at the price of one dollar and fifteen cents per square foot, according to the terms of said offer; and that in payment for said lands there be issued to said Crampton a bond or bonds of Hudson County, payable out of the amount appropriated and limited for the expenses of the next fiscal year; said bond or bonds to run not to exceed one year from the date thereof, and bearing interest at the rate of seven per centum per annum.

"Resolved, That the counsel to the board be authorized to examine the title of said Crampton to the lands at the corner of Newark and Palisade avenues, Jersey City, offered to this board and shown on a map accompanying such offer, and, if the same be satisfactory, that he ascertain the number of square feet contained in that portion of said lands lying north of the southerly line of Waldo avenue, if the same were produced across said property, and report the same to the county collector, who shall, provided said Crampton shall notify the county collector of his acceptance of the terms contained in these resolutions, prepare said bonds or bond in amount equal to the amount of said lands purchased and taken, at the rate of one dollar and fifteen cents per square foot, and the director-at-large and the county collector are hereby authorized and directed to sign said bond or bonds and affix the seal of the county thereto; and, whenever the said Crampton shall fur-
103 nish to said county collector a good and sufficient deed, vesting the title to said lands in the Board of Chosen Freeholders of the County of Hudson, approved by the counsel to this board, the county collector shall deliver said bond or bonds to said Crampton, in full payment for said lands."

Mr. Hall having seconded said resolutions, the question was stated, and vote on the same was taken by yeas and nays, with the following result:

Yeas—Freeholders Hall, Farrier, Harper, McPhillips, Blackwell, Feiler, Ginocchio, Startup, Curran, Cook, Johnson—11.

Nays—Freeholders McLaughlin, Frost, and Cox—3.

Absent—Freeholders Speer and Smith—2.

At a regular meeting of the board held August 17, 1876, the following communication from the director-at-large was read:

To the honorable the Board of Chosen Freeholders:

GENTLEMEN: At your regular meeting, 10th of August inst., your board adopted four several resolutions relative to a proper purchase of real property from Mahlon B. Crampton, of New York, to be used as a building site for a court-house and offices for the county officers, and accommodations for the courts, the grand and petit juries, and business of the board of freeholders and of the board of health, and I now have to return these several resolutions without my approval.

The several resolutions are Nos. 1 to 4, and in their order. I first object to resolution No. 1 for the reason that I am of the opinion
104 that the ground now owned by and in possession of the county contiguous to the building now known as "the court-house" is sufficient in area for present practicable purposes, the erection there of an additional building sufficiently large and suitable in every respect for the needs of the additional court-house business of the county, and for the accommodation and convenience of the public officers and officials named in the resolutions.

I refuse to approve of resolution No. 2 for the reason that therein is not contained any determined or definite idea of the quantity of land proposed to be purchased, at the corner of Newark and Palisade avenues.

I refuse to approve of resolution No. 3 for the reason that therein is proposed to be purchased an indefinite area of land, described by boundaries, which might result in a cost to the county of from $330,000 to $350,000, and that there is not now existing any legal provision for the payment of so large a sum of money for court-house purposes.

I object to resolution No. 4 for the reason that by a provision in said resolution, in these words, "provided said Crampton shall notify the county collector of his acceptance of the terms contained in these resolutions," the sale of the land in question at $1.\frac{15}{100}$ per square foot thereof being finally left to the option of Mr. Crampton after the county may have been at an expense of survey and selection of the site.

Very respectfully,

D. C. HALSTED,
Director-at-Large.

HUDSON COUNTY, N. J., *Aug.* 17, 1876.

On motion of Mr. Cook, the communication was received and laid over to next meeting.

105 At a meeting of the board held Sept. 14, 1876,

Mr. Hall presented the following resolution; which was read:

"Resolved, That the resolution passed August 10th by this board, authorizing the purchase of site for a new court-house, and vetoed by the director-at-large August 17th, be taken up and passed, notwithstanding the objections of the director-at-large."

The director declined to entertain the resolution, on the ground that the same should have been brought up at a regular meeting next after the veto, or at the same meeting.

At a regular stated meeting of the board held Dec. 7, 1876, the director-at-large reported, as follows:

The court business of the county is rapidly increasing, and the subject of providing accommodations in keeping with the growing business is of great importance, and should have your immediate consideration. The court-house within its present structure does not contain

sufficient room for the purposes to which it is allotted, and constant complaint is made by the judges of the court and members of the bar relative to the ventilation of the rooms in which the sittings of the court are held.

The matter has been subject for presentment by the grand juries of the county, and is daily becoming more imperative by the increasing necessities of the case. The act to reorganize the Board of Chosen Freeholders of the County of Hudson, approved March 23, 1875, was passed by the legislature at the earnest solicitation of the taxpayers of the county, and the experience, under the law, has been satisfactory to every honest taxpayer.

106 By the law, the director-at-large is invested with unusual powers, and the director has assumed to manage and control the powers entrusted to him for the sole advantage of the taxpayers of the county.

The meetings of the board have been frequent, and, at times, prolonged, and the director takes this occasion to thank those members of the board who have sustained him in carrying out the provisions of the law.

Very respectfully,

D. C. HALSTED,
Director-at-Large.

HUDSON COUNTY, N. J., *Dec.* 7, 1876.

At a regular adjourned meeting of the board held Dec. 14, 1876, special committee on court-house sites reported. The report was received and read, as follows:

To the Hon. the Board of Chosen Freeholders:

Your committee, to which was referred the remonstrance of property owners and citizens against a further expenditure of money upon the old court-house, and suggesting that the relief demanded by the grand juries, and by the county officers and the court, shall be found in a new court-house, beg leave respectfully to report that they have taken the matter into consideration, and find it true that the grand jury and witnesses have not proper accommodations; that the witnesses are obliged to stand in the hallway of the old court-house, where it is dark and cold and damp, waiting their turn to be heard; that the old building has not the necessary accommodations for the county officers, and that

107 the room in which is held the court of quarter sessions is claimed to be almost unendurable, and that it would cost a large sum to make additions to the old buildings sufficient for the purposes of the county, and even then that we could not get the proper available space and light.

Your committee, therefore, after considering the matter, came to the conclusion that it would be wise, as suggested in the remonstrance referred to us, to procure suitable ground upon which could be erected a new court-house, and more especially as property could be purchased at this time at a very low price. Different locations were considered, at different prices, and your committee came to the conclusion that the property of Mr. Mahlon Crampton, at the corner of Newark and Palisade avenues, would prove to be altogether the best site for a new court-house, being easy of access from all points of the county and very central, and the amount of land needed for the court-house and public offices could be purchased at a very low price.

Your committee, therefore, would respectfully recommend the pur-

chase of that portion of the property of M. B. Crampton, at the corner of Newark and Palisade avenues, lying north of the southerly line of Waldo avenue, if the same were produced across Crampton's property, at the rate of two thousand dollars for 2,500 square feet, and for that purpose recommend the adoption of the resolutions herewith drawn by the counsel to the board.

All of which is respectfully submitted.

JAS. CURRAN, JR.,
ABR'M SPEER,
P. McPHILLIPS,
F. I. SMITH,
Committee.

After the reading, Mr. Cox moved to lay the whole matter over to next meeting.

108 Lost, as follows, on yeas and nays, the same having been ordered and taken:

Yeas—Freeholders McLaughlin, Feiler, Ginocchio, Frost, Cox, Johnson—6.

Nays—Freeholders Hall, Farrier, Harper, McPhillips, Speer, Startup, Smith, Curran, Cook—9.

Absent—Freeholder Blackwell.

The following preamable and resolution on sites for court-house, as presented by aforesaid committee, were then read:

"Whereas remonstrances have been presented by property owners and citizens of this county to the board, against the expenditure of any more money in repairing or making additions to the old court-house of this county, and suggesting that the relief demanded by the grand juries, and by the county officers and courts of this county, shall be found in a new court-house; and,

"Whereas the said remonstrances, and the whole matter of the want of a new court-house in this county, with county offices and accommodations for grand juries, has been referred to a committee of this board, who have reported to this board that they find it true that the grand jury and witnesses have not proper accommodations; that the witnesses are obliged to stand in the hall-way of the old court-house, where it is dark, cold, and damp, awaiting their turn to be heard; that the old building has not the necessary accommodation for the county offices; and that the room in which is held the quarter sessions is almost unendurable; and that it would cost a large sum of money to make additions to the old building sufficient for the purposes of the county, and that even then a proper available space and light could not be obtained; and,

109 "Whereas the said committee also reported that it would be wise to provide suitable grounds upon which could be erected a new court house, and that they have considered different locations, and have concluded that the property of Mr. Mahlon Crampton, at the corner of Newark and Palisade avenues, would be altogether the best for the site of a new court-house, being easy of access from all parts of the county, and very central, and that the amount of land required for a new court-house and public offices of this county can be obtained cheap, and that portion of said land of Mr. Mahlon Crampton, at the corner of Newark and Palisade avenues, lying north of the southerly line of Waldo avenue, if the same were produced across the Crampton property, can be obtained for the sum of two thousand dollars for every twenty-five hundred square feet, and recommending the purchase thereof at that price; therefore, be it

"Resolved, That, after mature consideration, this board have come to the conclusion that further accommodations than are now possessed by the county are necessary for the proper transaction of the public business, and the security and preservation of the public records of this county; that any attempt to adapt or enlarge the present court house to meet the pressing wants of the county would be a wasteful expenditure of public money; and that the time has fully arrived when the public necessities of the county of Hudson require the erection of a new court-house and offices for the preservation of the public records of the county, and proper and convenient offices for the sheriff, county clerk, register, surrogate, and prosecutor of the pleas, and accommodations for the courts, the grand and petit juries and witnesses, and meetings and business of the board of chosen freeholders, and of the board of vital statistics, and that the county of Hudson does not at the present time own any sufficient quantity of land upon which to erect any such new court-house offices, and that it is the duty of this board, at this time, to procure such land as may be needed for such purposes.

110 "Resolved, That the property of Mr. Mahlon B. Crampton, as stated and set forth in the report of the committee of this board in this matter is the best and most convenient location, and that the price for which the same is offered by the said Mahlon B. Crampton is, in the judgment of this board, very cheap.

"Resolved, That it is the judgment of this board that so much of the lands offered by said Crampton, as are needed for the use and convenience of the county, for a site on which to erect a new court-house and rooms and offices for the safe keeping and preservation of the public records, and for the convenience of the public, and accommodation of the courts and juries and witnesses attending upon the same, and for the meetings of the grand jury and witnesses requested or desiring to appear before the same, and for the sheriff, county clerk, and prosecuting attorney, the surrogate, register, and meetings and business of the board of chosen freeholders, and of the board of health, as lies north of the southerly line of Waldo avenue, if the same were produced across said property, as shown on a map of said property, furnished to, and now in possession of this board, and that the same is hereby taken and purchased at the price of two thousand dollars for every twenty-five hundred square feet thereof, and that in payment for said lands there be issued to said Crampton, a bond or bonds of the county of Hudson, payable out of the amount appropriated and limited for the expense of the next fiscal year; said bonds to run one year from the date thereof, and bearing interest at the rate of seven per cent. per annum.

"Resolved, That the counsel to the board be authorized to examine the title of said Crampton to the land at the corner of Newark and Palisade avenues, Jersey City, as above set forth, and shown on a map now in the possession of this board, and if the same be satisfactory, that he ascertain the number of square feet contained in that

111 portion of said lands, lying north of the southerly line of Waldo avenue, if the same were produced across said property, and report the same to the county collector, who shall, provided said Crampton shall notify the county collector of his acceptance of the terms contained in these resolutions, prepare said bond or bonds, in amount equal to the amount of said land purchased and taken, at the rate of two thousand dollars for every twenty-five hundred square feet thereof, and the director-at-large and the county collector are hereby authorized and directed to sign said bond or bonds and affix the seal of the county

thereto. And whenever the said Crampton shall furnish to said county collector a good and sufficient deed, vesting the title to said lands in the board of chosen freeholders of the county of Hudson, approved by the counsel of this board, the county collector shall deliver said bond or bonds to said Crampton, in full payment for said lands."

Mr. Cox moved that the resolutions, with preamble, lie over.

Lost by the following vote, on yeas and nays, the same having been ordered and taken:

Yeas—Freeholders McLaughlin, Feiler, Ginocchio, Frost, Cox, Johnson—6.

Nays—Freeholders Hall, Farrier, Harper, McPhillips, Blackwell, Speer, Startup, Smith, Curran, Cook—10.

Question was then taken on the adoption of the preamble and resolutions from the committee, and the same were adopted by the following vote, on yeas and nays, the same having been ordered and taken:

Yeas—Freeholders Hall, Farrier, Harper, McPhillips, Blackwell, Ginocchio, Speer, Startup, Smith, Curran, Cook, Johnson—12.

Nays—Freeholders McLaughlin, Feiler, Frost, Cox—4.

112 At a regular meeting of the board, held Dec. 21, 1876, communications from H. Lembeck, J. Betz, and H. W. Harms, asking that their names be struck from petition for new court-house site, was read, received, and ordered filed.

Remonstrances from Geo. V. Newkirk and others, and from S. R. Syms and others, against the proposed purchase of Crampton property for a site for a new court-house, were read, received, and ordered filed.

At a regular stated meeting of the board, held January 4, 1877, a writ of certiorari at suit of Chas. Siedler et als., on matter of court-house site, was read, and referred to the counsel of the board to make return thereto.

In witness whereof I have hereunto set the corporate seal of the county of Hudson, and attested the same with my signature this twenty-sixth day of February, A. D. 1877.

CHARLES J. ROE,
Clerk as aforesaid.

113 New Jersey supreme court.

THE STATE (CHARLES SIEDLER ET ALS., prosecutors)
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF the county of Hudson.

On certiorari, &c.

It is hereby agreed that the testimony in above cause be taken before Robert D. Wynkoop, one of the masters of the court of chancery of New Jersey, on the part of the prosecutors, with the same effect as if said Wynkoop was one of the supreme court commissioners of this State, and the testimony was taken before him as such officer; that we proceed taking such testimony before said master, at his office, in Washington street, Jersey City, on Wednesday, March 28th, 1877, 10 a. m.

Jersey City, March 22, 1877.

WM. BRINKERHOFF,
Attorney for Prosecutors.
J. H. LIPPINCOTT,
Attorney for Defendants.

114 New Jersey supreme court.

THE STATE (CHARLES SIEDLER, PETER HENderson, Alex. Bonnell, prosecutors,
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF the county of Hudson.

On certiorari to remove resolutions. Order.

On motion of William Brinkerhoff, attorney of the prosecutors, it is ordered that the prosecutors have leave to examine witnesses and take evidence relating to, or based upon, the reasons filed in this cause, upon giving the notice prescribed by the rules of this court.

Entered March 29th, 1877, on motion of—

WILLIAM BRINKERHOFF,
Attorney for Prosecutors.

Let the above rule be entered in the minutes March 28th, 1877.

M. BEASLEY,
Chief Justice.

A true copy.

BENJ. F. LEE,
Clerk.

I acknowledge service of a true copy of the within order this March 30, 1877, and agree that examination of witnesses upon part of prosecutors proceed at office of Wm. Brinkerhoff April 5th, 1877, 7.30 p. m., before Robt. D. Wynkoop, master in chancery of N. J., reserving all objections to the testimony itself in its nature.

J. H. LIPPINCOTT,
Attorney of Defendants.

115 *Reasons.*

New Jersey supreme court.

THE STATE (CHARLES SIEDLER, PETER HENderson, and Alexander Bonnell, prosecutors)
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF THE county of Hudson.

On certiorari to remove resolutions, &c.

The prosecutors in this case insist that the following preamble and resolutions of the Board of Chosen Freeholders of the county of Hudson, adopted on the 14th day of December, 1876, and afterwards approved by the director-at-large of the county of Hudson, to wit: (Here follows the preamble and resolutions.) And all proceedings connected therewith, ought to be set aside, vacated, and annulled, for the following reasons:

First. Because the Board of Chosen Freeholders of the County of Hudson had no power, by law, at the time of the adoption or approval of said resolutions, or at any time subsequent thereto, to make such purchase.

Second. Because the said tract of land, of which the counsel of the

said Board of Chosen Freeholders claims to have ascertained the number of square feet contained therein, as directed by said resolutions, contains more than six acres of land, which is a much larger quantity of land than is necessary or required for the erection of a new court-house and offices for the preservation of the public records of the county of Hudson, and proper and convenient offices for the sheriff, county clerk, register, surrogate, and prosecutor of the pleas; accommodations for the courts, the grand and petit juries, and witnesses, and meetings and business of the Board of Chosen Freeholders, and of the board of vital statistics.

116 Third. Because the property of Mahlon B. Crampton, as stated and set forth in the report of the committee of said board in this matter, was not the best and most convenient location, and that the price for which the same was offered by said Crampton was not "very cheap."

Fourth. Because said land is not fairly and reasonably worth two hundred and twenty-five thousand dollars.

Fifth. Because the price proposed in said resolutions to be paid for said land, is and was, on the fourteenth day of December, eighteen hundred and seventy-six, much greater than the fair market value thereof, and greater than the sum to be paid to the real owner or owners of said lands.

Sixth. Because said land is not adapted for building purposes, and would require a great outlay of money and time in excavating rock and earth to make the same suitable for the necessary use of the county.

Seventh. Because the purchase of said land is not necessary for any public purpose, and said land is not required for a site for a court house or for any public buildings; the present court-house and public buildings of the county being all that the necessities of the county require at the present time.

Eighth. Because the said county had, by its said board, at the time of the adoption and approval of said resolutions, sufficient land within the present "court house enclosure," or court-house site, for the purposes for which the said board pretended to purchase the lands of and from said Mahlon Crampton.

Ninth. Because, if the present court-house and other buildings within the same enclosure are not of sufficient size and convenience for
117 the purpose for which they were erected, and since used and occupied, or for any contemplated additional accommodations, sufficient land surrounds and is connected with the present court-house site, between Newark and Pavonia avenues, in Jersey City, to admit of any reasonable and proper extension, alteration, and repair; and the present court-house is of sufficient durability upon which to make the same; and sufficient land is enclosed within the said present court house site, on Newark and Pavonia avenues, to accommodate the erection of any additional county buildings required for county purposes, and for any of the purposes expressed in said resolutions.

Tenth. Because said board did not, in its said resolutions, name the quantity of land that it desired or required for the purposes named in said resolutions, but directed that the same be ascertained by the counsel of said board, which was illegal.

Eleventh. Because the said resolutions were in the nature of propositions, which did not legally become a contract, by proper acceptance.

Twelfth. Because said board delegated a power to individuals, in the matter of the pretended purchase and sale of said lands, which it (the board) alone had the right to exercise.

Thirteenth. Because said board did not determine how much land was "needed," for the use and convenience of the county, for a site on which

to erect a court-house, and rooms and offices for the safe keeping and preservation of the public records, and for the convenience of the public and accommodation of the courts and juries and witnesses attending upon the same, and for the meetings of the grand jury and witnesses requested or desiring to appear before the same, and for the sheriff, county clerk, and prosecuting attorney, the surrogate, register, and meetings and business of the Board of Chosen Freeholders, and of the board of health.

118 Fourteenth. Because said resolutions are not sufficiently explicit as to the kind of buildings necessary to be erected upon said land, or the quantity of land required as a site for buildings.

Fifteenth. Because the said resolutions directed the director-at-large and the county collector to sign said bond or bonds and affix the seal of the county thereto, and whenever the said Crampton should furnish to the county collector a good and sufficient deed vesting the title to said lands in the Board of Chosen Freeholders of the County of Hudson, approved by the counsel of said board, the county collector should deliver said bond or bonds to said Crampton, in full payment for said lands, which was illegal.

Sixteenth. Because there has not been a legal delivery of any deeds from said Crampton to said board for said land.

Seventeenth. Because there has not been any legal acceptance upon the part of said board of any deed for said land, or of the title to said land.

Eighteenth. Because the said board did not, in its said resolutions or in any other resolution, name the amount for which the bond or bonds were to be drawn or issued, or the number of bonds to be issued, but allowed the denomination, number, and kind of said bonds, to be at the option of others.

Nineteenth. Because the terms of the so called bonds or papers writing, issued and pretended to have been delivered in payment for said land, were inserted in said so called bonds or papers writing, without any express authority from said board.

Twentieth. Because the seal of the county of Hudson was not affixed to said so called bonds or papers writing by the director-at-large and the county collector.

119 Twenty-first. Because the said so called bonds were improperly and illegally issued.

Twenty-second. Because said board had no power, by law, to issue, or cause to be issued, any so-called bond or bonds, in payment for the land intended to be referred to in said resolution, or any other land pretended to have been purchased in pursuance of said resolutions.

Twenty-third. Because said so called bonds were issued directly to Mahlon Crampton, the alleged owner of said lands, pretended to have been purchased by said board, in virtue of said resolutions.

Twenty-fourth. Because said so called bonds issued, and pretended to have been delivered, to said Crampton, pretended to incur an obligation upon the part of the Board of Chosen Freeholders of the County of Hudson, for the payment of which no provision is or was made by law.

Twenty-fifth. Because no appropriation had been made by said board, or by any legal authority, for the purchase or payment of said land.

Twenty-sixth. Because the sum of two hundred and twenty-five thousand dollars, being the amount named as the price to be paid for said lands, was not included in the appropriation for the fiscal year, begin-

ning on the first day of December, eighteen hundred and seventy-six, and ending on the first day of December, eighteen hundred and seventy-seven.

Twenty-seventh. Because no appropriation has, at any time, been made for the payment of the price pretended to have been paid for said land, or for the payment of the said so-called bonds, or any of them.

Twenty-eighth. Because the said so-called bonds, pretended to
120 have been issued in pursuance of said resolutions, incur an obligation in the month of December, eighteen hundred and seventy-six, and are, by the express terms thereof, to become due and payable after the first day of December, eighteen hundred and seventy-seven.

Twenty-ninth. Because the obligations incurred by the said board, for said pretended purchase, although incurred within the fiscal year commencing December 1st, 1876, are, by the express terms of the said resolutions of said board, chargeable upon the fiscal year beginning on the first day of December, eighteen hundred and seventy-seven, for which no tax levy or appropriation had been made, or could have been made.

Thirtieth. Because no appropriation has since been made, for the payment of said so-called bond or bonds, or money named, as the price intended to have been paid for said land.

Thirty-first. Because no resolution of said board has been adopted, motion carried, or proceeding had, directing the amount of such purchase, or the amount named in the so-called bonds, or any part thereof, to be paid or retained from the appropriation of the fiscal year in which such purchase was made.

Thirty-second. Because, by including the said sum of two hundred and twenty-five thousand dollars in the expenditures made, and necessarily to be made, within the fiscal year commencing December 1st, 1876, said expenditures will exceed the amount raised by tax for said year, and is, therefore, illegal.

Thirty-third. Because said board has no legal control over the appropriations to be made for the fiscal year in which said bonds mature.

Thirty-fourth. Because the said sum of two hundred and twenty-five thousand dollars, or any part of it, was not included in any tax
121 levy, and was not named in any order or grant for the raising of any sum or sums of money, for any purpose specified in any act of the legislature of the State of New Jersey, controlling, relating to, or in any manner affecting said board or the county of Hudson.

Thirty-fifth. Because the purchase of said land was not paid for in cash.

Thirty-sixth. Because said lands were paid for in bonds of the county of Hudson.

Thirty-seventh. Because said resolutions did not provide for the sale of said bond or bonds, and, therefore, the same were illegally disposed of.

Thirty-eighth. Because the said resolutions are, in divers other respects, illegal and contrary to law.

WM. BRINKERHOFF,
Attorney of Prosecutors.

122 New Jersey supreme court, November term, 1877.

CHARLES SEIDLER ET AL.
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF Hudson Co. } On certiorari.

The court having heard the arguments of counsel and inspected the proceedings and resolutions removed by the writ in the cause, and duly considered the reasons filed, it is ordered that the said proceedings and resolutions be set aside with costs to prosecutors, together with all necessary disbursements for printing, &c.

Entered November 22d, 1877, on motion of—

WM. BRINKERHOFF, *Atty.*

I, Benj. F. Lee, clerk of the supreme court of the State of New Jersey, do hereby certify, that the foregoing is a true copy of an order made in the above stated cause by said court and entered in the minutes thereof.

In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this eighth day of April, A. D. 1878.

[L. S.] BENJ. F. LEE, *Clk.*

Filed July 19, 1878.

123 United States circuit court for the district of New Jersey.

AUGUSTUS ZABRISKIE AND OTHERS, COMPL.,
and
MAHLON B. CRAMPTON AND OTHERS, DEFT'S.

It is stipulated and agreed, between the solicitor for the complainants and the respective defendants in the above stated cause, that the part of the answer of defendant, the County of Hudson, which avers that such defendant has never collected any of the rents, issues, and profits of the lands conveyed to it by the defendant Crampton, nor has it ever exercised any acts (meaning physical acts of ownership) over said lands, but has allowed said lands to remain in the exact condition in which it was at the time of the acceptance of the deed from Crampton, shall, for the purpose of this suit above on the main argument only, be taken as if proved, but not on any accounting between the parties for such rents, issues, and profits, or for any other purposes than on the pending argument aforesaid.

It is also admitted that Mahlon B. Crampton, at the time of
124 the passage of the resolutions and execution of the deed, was and since hath been a resident of Brooklyn, New York.

Dated July 16th, 1878.

PELU BENTLEY,
Solicitor for the Complainant.
J. D. BEDLE,
Counsel of Mahlon B. Crampton.
J. H. LIPPINCOTT,
Counsel of Board of Chosen Freeholders of the County of Hudson.

Filed July 25, 1878.

125 United States circuit court, district of New Jersey.

AUGUSTUS ZABRISKIE ET AL., COMP'TS,
vs.
MAHLON B. CRAMPTON, & THE BOARD OF Chosen Freeholders of the County of Hudson, defts. } In equity.

By NIXON, *District Judge:*

On the 14th day of December, 1876, the Board of Chosen Freeholders of the County of Hudson, in view of the need of the county, and contemplating the purchase of land for the erection of a court house and other county buildings, passed a resolution agreeing to buy of the defendant Mahlon B. Crampton a certain lot at the corner of Newark and Palisade avenue in Jersey City, at the price of two thousand dollars, for every two thousand & five hundred square feet, and in payment for the same, to issue to said Crampton a bond or bonds of the County of Hudson, payable out of the amount appropriated & limited for the expense of the next fiscal year—said bonds to run one year from the date thereof, & bearing interest at the rate of seven per cent. per annum, & the director at large the & county collector being authorized & directed to sign said bond or bonds, & affix the seal of the county thereto.

126 On the 18th of December, 1876, the said Crampton made & executed a deed conveying to the board of chosen freeholders of the of county Hudson a lot of land therein, particularly described by metes & bound, & on the 22nd of the same month he delivered the same to the board, which was accepted by them & duly recorded in the office of the register of deeds, and the director of the board on the acceptance of the deed executed & delivered to Crampton three several bonds of that date payable in one year with interest at 7 per cent. per annum; two for $75,000 each & one for $75,720, in consideration for said conveyance.

Being dissatisfied with the purchase & designing to test the validity of the same, Charles Seidler & others, residents & tax-payers of the county, on the 27th of December, of the same year, applied for & obtained from the supreme court of the State a writ of certiorari directed to the said board of chosen freeholders, commanding them to send up to the court, for review & correction, the said resolution & all other

127 matters connected therewith so far as they remained before the board, & such proceedings were thereupon had. that on the 22*th* of November, 1877, the said court, by its final judgment, declared the resolution illegal & void, & set the same aside.

Notwithstanding this judgment of the supreme court no action was taken by the board of freeholders to reconvey the said land or to obtain the custody of said bonds; and on the 13th of March, 1878, Crampton commenced a suit at law in this court against the said board, to receive the amount of said , with the interest which had accrued therein, as the price & value of the land conveyed by him as aforesaid.

On the 4th of April, 1878, Augustus Zabriskie, William W. Shippen, Francis G. Wetmore, & Stephen D. Harrison, resident tax-payers & land owners of the county of Hudson, filed a bill on the equity side of the court, setting forth the foregoing facts & praying the court to enjoin & restrain the said Crampton & the board of chosen freeholders from prosecuting or defending the said action; & also to restrain the said Crampton from attempting to recover or receive the amount of said bonds or any part thereof or from parting with the bonds, &

128 the board of freeholders from paying the same or any part thereof until the further order of the court.

Several answers have been filed by Crampton & by the board of freeholders, the latter admitting all the material allegations of the bill of complaint, & offering to re-convey the lot of land to Crampton if he would accept the deed & surrender the notes, and the former denying the illegality of the resolution of the board of freeholders authorizing the purchase, insisting that the contract & conveyance were lawful, & that he is entitled to hold the notes as payment of the consideration of the sale, and setting up that one of the said notes for $75,720 was assigned by him, on the day of its date & delivery, to one Henry Harrison in consideration of the said Harrison's releasing the lot of land sold from the lien & incumberance of a certain mortgage for $150,000 which he held against the land conveyed to the board of freeholders, & also against other lands of the mortgagor Crampton. It also admits the proceedings & judgment of the supreme court of the State or the writ of certiorari, but claiming that the writ was not allowed until after the deed & bonds had been delivered by the respective parties; that the said writ removed into the supreme court only such proceedings
129 as took place before the board of freeholders on the 14th of December, 1876, when the resolution was passed, & such proceedings as remained before the board preliminary or previous thereto, and that none of the transactions between the defendant Crampton & the board were removed to or were before the said court, & that as the defendant was no party thereto, he is in no wise bound or concluded by the judgment; and further, that the said judgment was only by a part of the court, known as the branch court, consisting of only three of the nine justices comprising the whole court, & that the said court is not the court of last resort in the State of New Jersey.

There are no material questions of fact raised by the pleadings, but only questions of law, and altho' others were ably discussed only two seem to require dist*rict* consideration, to wit:

1. Whether the complainants have the right to maintain their bill.
2. Whether the purchase of the land as made was ultra vires.

1. In regard to the first the complainants are tax-payers & real-estate owners of the county of Hudson, & the ground upon which they ask for relief is that they have no adequate remedy at law, & that they are threatened with irreparable injury by the illegal purchase of the
130 land & the unauthorized issue of the corporate bonds by the board.

There has been much discussion in this country as to the right of taxable inhabitants or property holders to resort to a court of equity to restrain or set aside corporate acts alleged to be unlawful. Altho' the discussion has resulted in a conflict of opinion, the weight of authority unquestionably is that such right exists, & especially in cases where the threatened illegal corporate act will result in increasing the burden of taxation (Cooley *a* Tax, 548, Dill; Mun. Cor., § 731, 736).

It does not appear that the precise question has ever had consideration in the supreme court, altho' the principle that such a suit was maintainable by taxpayers or land owners against municipal corporations was involved in the case of Dodge vs. Molsey (18 How., 331). That was a suit in equity, United States for the district of Ohio, by a stockholder residing in the State of Connecticut, to enjoin the collection of a tax assessed by the State of Ohio on the Commercial Bank of Cleveland, branch of the State Bank of Ohio, the tax collector, the di-

rectors of the bank, & the bank itself being made defendants. The ground was taken by the defendants that courts of equity had no
131 jurisdiction over corporations as such at the suit of a stockholder for violations of their characters, & none for the errors of judgment of those who ordinarily managed their business. The court considered the objection & maintained the jurisdiction, holding that "it has been found necessary for prevention of inquiry, for which the common-law courts were inadequate, to sustain in equity such a jurisdiction in the progressive development of the powers & effects of private corporations upon all the business & interests of society."

The question, however, is not an important one, as it has principal references merely to the methods of judicial procedure. In cases where it clearly appears that the remedy is more speedy & complete by the interference of individual taxpayers, it is difficult to understand why the court, adhering to old technical forms, should insist that the proceedings ought to be in the name of a public officer on the relation of the private citizen.

In the present case, it must be conceded that the corporation itself could maintain a suit against the members of the board of freeholders, restraining them from the commission of illegal acts affecting the
132 interests of the county. Since the court reaches all the parties interested & all the questions involved, by the form of a suit in which the complainants have prevented their case, it is not perceived why we should not proceed to consider it, & the more especially since the corporations from which objections to the mere form of the proceeding ought to come, if from any source, has acquiesced by answering the bill of complaint on the merits.

2. The remaining question is to be determined by as certaining the power & privileges confessed, & the restrictions imposed by the laws of the State upon the board of chosen freeholders of the county of Hudson.

It is constituted a body politic & corporate in law by the 1st section of the act entitled "An act to incorporate the chosen freeholders in the respective counties of the State," approved April 16, 1846 (Rev. of N. J., 127), & hence possesses only such power & rights as are clearly comprehended within the words of the law creating it, or as may be derived therefrom by necessary implication, regard being had to the objects of the grant & the organization under the grant (Minturn vs. La Rue, 23 How., 435).

By the 2d section of the act, a general authority is conferred upon the board to purchase, receive & hold lands, as well as goods &
133 chattels, in trust to & for the use of the county.

Under the 4th section, it is the duty of the board at their stated & annual meeting, or at any other meeting held for the purpose, to vote, grant, & raise such sums of money as they deem necessary & proper for doing & executing all the legal purposes, objects, & business of the county; and, after they have passed an order or grant for the raising of any sum of money, they are required, in the 12th section, to direct, in writing, the assessors of the several townships to assess the said sum or sums on the inhabitants & their estates, agreeably to the law for the time being for the raising of money by taxation for the use of the State.

The 13th section authorizes the board whenever the need of the county requires it to assess & collect money by taxation, for the use of the county, at a different time of the assessment for the State tax.

These are the general provisions of the law in regard to the powers of he board of chosen freeholders, & their statement brings us to the in-

quiry whether there has been any special legislation which in anywise limits their exercise.

134 On the 26th of February, 1874, the legislature of the State passed an act (Pam. L., 1874, p. 202) charging the commencement & termination of the fiscal year of the board of freeholders of Hudson County from the 1st of May to the 1st of December of the said year, & authorizing the board, in order to enable them to defray their expences from the 1st of May, 1873, to the 1st of December, to issue & sell county bonds, not exceeding $250,000 in amount; & creating a sinking-fund commission, consisting of the director of the board, the county collector, & one chosen freeholder, to take charge of all sums of money raised by tax or otherwise, to retire at maturity any bonds issued by the county.

The 5th section of the act expressly limits the expenditures of the board in any fiscal year to the amount raises by tax for said year, unless by the spread of an epidemic or contagious desease a greater expenditure is required; & makes it the duty of the board to fix the amount to be raised by tax for county purposes at some meeting held prior to July 15th in any year.

By another act of the legislature approved February 7th, 1876, (Pam. L., 1876, p. 16,) it is made a misdemeanor for any board of chosen freeholders, in any township committee, or any board of aldermen or

135 common counselmen, or any board of education, or any board of commissioners of any county, township, city, town, or borough, or any committee or member of any such board or commission, to disburse, order, or vote for the disbursement of public money in excess of the appropriation, respectively, to any such board or committee, or to incur obligations in excess of the appropriation & limit expenditure provided by law for the purposes, respectively, of any such board *in* committee; and it subjects to fine & imprisonment each member thereof who thus disburses, orders, or votes for the disbursement & expenditure of public moneys, or thus incurs obligations, in excess of the amount appropriated & limit of expenditure as now or hereafter appropriated & limited by law.

In this state of the law, what has the board of chosen freeholders done of which complaint is made?

On the 14th of December, 1876, they passed the resolution before referred to, agreeing to purchase the lot of land of the defendant, Crampton. On the 22d they accepted a deed of the same, & issued & delivered the bonds of the county for $225,720; they incurred this debt, &

136 so far as the case reveals, made no provision for its payment. In the absence of the restrictive legislation of 1874 & 1876, it is quite clear that they had the right to buy the land. It was the lawful body to determine the needs of the county in this respect; & the 2nd section of the chosen freeholders act imposes no limitation upon their discretion, except, perhaps, the wants of the county.

The contract for the purchase was consum'ated on the 22nd of December, 1876, and if the board at any regular meeting, or especial meeting called for the purpose, prior to the 15th of July following, had included the consideration-money to be paid in the amount to be raised by tax for the current fiscal year, it is difficult to perceive any illegality in the transaction; there was no difficulty about the issuing of the bonds in itself, for the power to purchase implies the right to issue valid evidences of indebtedness, (Seybert vs. City of Pittsburg, — Wall., 272.) But the trouble arises from their making expenditures exceeding the amount to be raised by tax, & which Crampton knew, constructively at least, they

could not do, and thus coming into direct conflict with the 5th section of the act of 1874; that section was meant to limit their power to incur debt without provision for its payment. Any other construction
137 would render it nugatory, or at least of small value to the taxpayer. In dealing with the officers of a municipal incorporation, it was the duty of Crampton to take notice of the law. All expenditures made & all liabilities incurred during any fiscal year in excess of the amount raised by tax for the year, are ultra vires & void. These municipal bodies can only live & act within the domain prescribed by the law which creates them. The principle is too well settled to be disturbed, that the officer of a municipal corporation cannot bind the corporation by any contract which is beyond the scope of its powers.

"This doctrine," says Dillon (Mun. Con., § 381), "grows out of the nature of such institutions, & rests upon reachable & solid grounds. The inhabitants are the corporators; the officers are but the public agents of the corporation. Their duties & powers are prescribed by statute or charter, which all persons not only may know, but are bound to know. The opposite doctrine would be fraught with such danger & accompanied with such abuse that it would soon end in the ruin of municipalities or be legislatively overthrown."

There is much force in the argument of the learned counsel of the defendant, Crampton, that the transaction did not subject the indi-
138 vidual member of the board to the penalties of the act of 1876, which is a penal statute, & requires strict construction. Serious doubts upon that point must arise notwithstanding the decision of the supreme court of the State, to the judgment of which we are accustomed to bow with deference.

But in the view of the case here taken that is not an important question.

We regard the act of 1874 as a definite limitation of the power of the board of freeholders to involve the county in debt. All contracts by its officers involving future liabilities, for the payment of which no provision is made, are ultra vires.

The one under consideration falls within the description, & there must be a decree for the complainants.

Filed July 31, 1879.

139 *Final decree.*

At a stated term of the circuit court of the United States of America for the district of New Jersey, in the third circuit, held at the court-house in the city of Trenton, in the first day of October, in the year of our Lord eighteen hundred & seventy-nine.

Present, the honorable John T. Nixon, district judge.

AUGUSTUS ZABRISKIE ET AL., COMP'TS,
and
MAHLON B. CRAMPTON ET AL., DEF'TS.

This cause having come on to be heard upon the bill of complaint herein, the separate answers thereto of the defendant Mahlon B. Crampton, & the defendant the Board of Chosen Freeholders of the County of Hudson, & the replications of the complainants to each separate answers & the proof, oral, documentary & written, taken & filed in said cause, & having been argued by counsel for the respective parties: Now, therefore, in consideration thereof it is ordered, adjudged, & decreed,
140 & the court doth hereby order, adjudge, & decree as follows, to wit:

That the contract between the defendants Mahlon B. Crampton &

The Board of Chosen Freeholders of the County of Hudson, for the sale & purchase of the lands & real estate mentioned & described in said bill of complaint, is illegal & void;

That the said Board of Chosen Freeholders of the County of Hudson do reconvey to the said Mahlon B. Crampton, by deed of conveyance with apt and proper words, the said lands & real estate, clear of all incumbrance thereon made by the said board of freeholders whilst holding the legal title to the same, but making the said conveyance nevertheless subject to such equities as Henry Harrison, trustee under the will & testament of James Harrison, dec., may leave it such land & real estate, if any such he have:

That the said Mahlon B. Crampton do surrender & deliver up to the said The Board of Chosen Freeholders of the County of Hudson the bonds which were issued & passed to him as the consideration for the attempted transfer of the said real estate, & which were held by him at the time of filing his answer in the cause, & do accept & receive from
141 the said board of freeholders the deed hereinbefore ordered to be executed & delivered; and that the said Mahlon do cease & desist from maintaining & prosecuting any action or suit against the defendant The Board of Chosen Freeholders of the County of Hudson either upon the said bond in the bill of complaint mentioned, or any portion of the same, or for the value of the lands & real estate in the said bill of complaint mentioned, and that he be enjoined & restrained from assigning, transferring, or in any way parting with the said bonds, except to surrender them to the said board as aforesaid.

That the said board of chosen freeholders of the county of Hudson be also enjoined & restrained from paying the said bonds or any portion thereof in the bill of complaint mentioned & described.

And it is further ordered, adjudged & decreed that either party to this suit may apply to the court to have any question regarding the profits & burden of said land adjusted & settled between the respective parties, & make such order in the premises as shall appear to be equitable & just.

142 And it is further ordered & decreed that the respective parties to the suit shall pay their own costs.

JNO. T. NIXON,
District Judge.

Filed Oct. 1, 1879.

143 UNITED STATES OF AMERICA,
District of New Jersey, ss:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the district of New Jersey, in the third circuit, in a certain suit in equity therein lately depending between Augustus Zabriskie and others, complainants, and Mahlon B. Crampton and another, defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Trenton, this twenty-fourth day of October, A. D. 1879, and in the one hundred and fourth year of the Independence of the United States.

[SEAL.]

S. D. OLIPHANT,
Clerk of Circuit Court.

(Indorsement on cover:) No. 1070. Mahlon B. Crampton, appellant, vs. Augustus Zabriskie, William W. Shippen, Francis G. Wetmore, and Stephen D. Harrison. New Jersey C. C. U. S. Filed 13th November, 1879.

REC. 1070—5

In Supreme Court of the United States.

No. 1070.

MAHLON B. CRAMPTON,
Appellant.

and

AUGUSTUS ZABRISKIE et al.,
Appellees.

PHILA BAR ASSOCIATION

ON APPEAL ~~TO~~ FROM U. S. CIRCUIT COURT

For the District of New Jersey.

BRIEF OF

JOSEPH D. BEDLE,
Of Counsel with Appellant.

DAVISON & CO., Law Printers, 19 Montgomery Street, Jersey City.

U. S. Supreme Court.

No. 1070.

MAHLON B. CRAMPTON,
Appellant,

and

AUGUSTUS ZABRISKIE ET AL.,
Appellees.

On Appeal from Circuit Court of District of New Jersey.

On Bill, Answers and Stipulation of Facts.

BRIEF OF APPELLANT.

STATEMENT OF THE CASE.

The Board of Chosen Freeholders of the County of Hudson, State of New Jersey, on December 14, 1876, passed certain resolutions, (a copy of which is substantially set out in the bill of complaint, but annexed to the answer of Crampton is a *precise* copy)—for the purchase of certain lots in Jersey City, on which to erect a Court House and offices for the county, at the price of $2000 per lot of twenty-five hundred square feet, and in payment thereof, the county to issue bonds to Crampton "payable out of the amount appropriated and limited for the expense of the next fiscal year; said bonds to run one year from the date thereof, and bearing interest at the rate of seven per cent. per annum."

Crampton, in accordance with the terms of said resolutions, accepted the proposition of purchase, and on December 22, 1876, delivered to the board a deed duly executed, bearing date December 18, 1876, for the lots included in said resolutions, which deed was accepted by said board, and the board thereupon on December 22, 1876, delivered to said Crampton three several bonds, bearing date December 22, 1876, for the purchase money of said lots, and a copy of one of which (all being alike except as to amount) is set out in the answer of Crampton. The total amount of the purchase money was $225,750; two of the bonds were

for $75,000 each, and the other for $75,750, and all were made payable to Mahlon B. Crampton, December 18, 1877, with interest at seven per cent. from date. The bonds were regularly executed by the officers of the board, according to the resolutions. The deed for the lots was accepted as aforesaid, and recorded by the board in the Register's office of the County of Hudson, according to law, and the board thereupon entered into and has ever since continued in possession of the premises.

Crampton, March 13, 1878, commenced an action of debt in the U. S. Circuit Court for the District of New Jersey, to recover the amount of the two bonds of $75,000 each, against the Board of Chosen Freeholders of the County of Hudson, (the said Crampton having at the time of the delivery of the deed aforesaid assigned the other bond of $75,750 to Henry Harrison, as security for a bond and mortgage which Harrison held upon the premises in question, including other land, and from which mortgage Harrison released said premises, receiving said bond, as the consideration thereof. See stipulation signed by counsel, of the truth of these facts, as set out in answer of Crampton.)

The complainants, as general tax payers, owners of land and residents in the County of Hudson, filed their bill in this cause in the said Circuit Court for the District of New Jersey, against Crampton, and the board, alleging that the said resolutions and purchase and bonds were illegal as beyond the power of the board, and praying a decree that Crampton *deliver up all the bonds to be cancelled; that the board reconvey the lands to Crampton, and that he be compelled to accept a deed therefor from the board, and be enjoined from prosecuting his suit.* After the delivery of said deed and bonds, and after the complete execution of the contract of purchase, three residents and tax payers of Hudson county obtained a certiorari out of the Supreme Court of New Jersey, directed to the board to send up said resolutions for review, and thereupon said Supreme Court set aside the same November 22, 1877. This fact is averred in the bill.

The answer of Crampton admits most of the leading *facts* of the bill, but claims that the purchase was valid and the bonds collectable against the county. It denies the right or duty of the board to reconvey the property and the duty of Crampton to accept a reconveyance, and surrender the bonds to be cancelled. It also sets up the facts before stated as to the assignment of the one bond to Harrison; also that the writ of certiorari removed into the Supreme Court of New Jersey only such proceedings as took place before the board previous to and on the day the resolutions were passed, (December 14, 1876); that none of the pro-

ceedings subsequent thereto were removed; that he was not a party in the said certiorari before the Supreme Court, or bound by the judgment of the Court therein; that the Court could not and did not pass upon and determine the validity of said deed and bonds, and did not and could not conclude said Crampton; also that the said certiorari was decided by a part only of the Supreme Court known as the Branch Court which consisted of only three out of the nine Justices of the Court; also that the said Supreme Court is not the Court of last resort in New Jersey, said Court of last resort being the Court of Errors and Appeals, into which the case could have been removed by the board; also that after said resolutions were executed, the setting aside of the same on certiorari could not affect the purchase as closed up.

The answer of the board being in the year 1878, after the members were changed by the elections, admits the passage of the resolutions, the execution, delivery and acceptance of the deed, the execution and delivery of the bonds, and the retention of the deed and lands by the board, yet alleges that the resolutions were illegal and the bonds void, and denies that it was the duty of the board to tender a deed to Crampton, but saith that it was the duty of Crampton to surrender the bonds before it was the duty of the board to re-convey.

The bill makes no averment of the grounds upon which the resolutions and purchase are alleged to be illegal and *ultra vires*, but the complainants claim that they are illegal and void as contrary to two acts of the Legislature of New Jersey, one being entitled, "An act to change the dates of the fiscal year of the Board of Chosen Freeholders of Hudson county and to provide for the funding of the expenses of said board from May first, one thousand eight hundred and seventy-three, to December first, one thousand eight hundred and seventy-three, and to create a sinking fund commission," approved February 26, 1874, (Laws of 1874, page 202,) the fifth section of which reads as follows: "And be it enacted that the expenditures of the Board of Chosen Freeholders in any fiscal year shall not exceed the amount raised by tax for said year, unless by the spread of an epidemic or contagious disease, a greater expenditure shall be required for the protection of the public health; and the board may fix the amount to be raised by tax for county purposes at any meeting of said board held prior to July (15th) fifteenth, in any year;" the other act being entitled, "A supplement to an act entitled, 'an act for the punishment of crimes,'" approved March twenty-seventh, eighteen hundred and seventy-four, approved February 7,

1876, (See. Laws, 1876, page 16), and which reads as follows: "Be it enacted by the Senate and General Assembly of the State of New Jersey, That if any Board of Chosen Freeholders, or any Township Committee, or any Board of Aldermen or Common Councilmen, or any Board of Education, or any board of commissioners of any county, township, city, town or borough in this State, or any committee or member of any such board or commission shall disburse, order or vote for the disbursement of public moneys, in excess of the appropriation respectively, to any such board or committee, or shall incur obligations in excess of the appropriation and limit of expenditure provided by law for the purposes respectively of any such board or committee, the members thereof, and each member thereof, thus disbursing, ordering or voting for the disbursement and expenditure of public moneys, or thus incurring obligations in excess of the amount appropriated and limit of expenditure as now or hereafter appropriated and limited by law, shall be severally deemed guilty of malfeasance in office, and on being thereof convicted shall be punished by fine not exceeding one thousand dollars or imprisonment at hard labor for any term not exceeding three years, or both at the discretion of the Court."

The Court below held that the act of 1874 was a limitation upon the power of the board to make the purchase, and decreed that the contract of sale and purchase were illegal and void; that the board should reconvey the lands to Crampton; that Crampton should accept said deed and deliver up to the board the bonds held by him at the time of the filing of the bill, and desist from prosecuting any action against the board upon the bonds or for the value of the bonds; also that the board be enjoined from paying the bonds. (See opinion and decree.)

This appeal is from the whole decree.

The pleadings concisely set out the facts relied on, which with the stipulations forming part of the record, present the case so succinctly as to obviate any further statement.

It being admitted that apart from the acts of 1874 and 1876 aforesaid, the board had full power to make this contract of purchase, and to execute the bonds as valid instruments, and being anxious to have the case decided upon its merits, I shall consider only two leading questions:

1. The effect of the acts of 1874 and 1876 on this contract of purchase, and the right of Crampton to recover the purchase money.

2. The effect of the judgment of the Supreme Court of New Jersey on the purchase as executed, and the right of recovery by Crampton.

ARGUMENT.

The contract of purchase was completely closed, the board having in good faith received the deed and the land and executed and delivered the bonds to Crampton. The board kept the deed and the land. Crampton received the bonds as the evidence of the consideration, and each then stood towards each other independently, as any other vendor or vendee of property, after the sale is ended. These complainants now intervene and seek to overthrow the sale, not on the ground of any want of integrity in the purchase as to price, needs of the county, suitableness of location, or otherwise, but solely on allegations of want of power in the board.

I.

As to the effect of the acts of 1874 *and* 1876?

The Board of Chosen Freeholders is a public corporation and although its members, except the director, in the County of Hudson, are elected annually, the body is a perpetuity, a continuing corporation. 3 C. E. Green, 91, Freeholders of Monmouth v. Red Bank Co. 6 Vroom, 124, Feury v. Roe. Revision, (1877), p. 127, sec. 1.

There is a special law applicable alone to Hudson county, in regard to the composition, election of members, and organization of the board, yet its powers are defined by the general laws of the State.

Special act, laws 1875, p. 324.
General acts, Rev. (1877), p. 127, &c.

A. To understand the effect of the acts of 1874 and 1876 upon the powers of the board, it is necessary to consider exactly what such powers are, apart from said acts.

By section 2 of the act to incorporate the Chosen Freeholders of the counties, Rev. p. 127, the boards are empowered to "acquire, *purchase*, receive, have and hold any lands, tenements, hereditaments, goods and chattels in trust to and for the use of their said counties respectively, and for such other uses as are or may be designated by law," &c.

By section 4 of the same act, it is made the duty of every such corporation as follows: "That it shall be the duty of every such corporation *at their stated and annual meetings, or at any other meeting duly held* for the purpose to vote, grant, and raise such sum or sums of money for the building, purchasing or repairing of poor houses, jails, *court houses* and bridges, the surveying and ascertaining the lines, the prosecuting and defending the rights, defraying the public and other necessary charges, and *doing, fulfilling and executing all the legal purposes, objects, business and affairs of such county*, as they or the major part of them shall deem adequate or proper; all which moneys so raised shall be applied, paid and expended under the direction and management of the said corporation."

By section 39 it is enacted "That the lands, tenements and hereditaments which have been granted, conveyed or vested to, or in the Board of Justices and Chosen Freeholders of any county, or any person or persons for the use of such county, shall be and remain vested in the Board of Chosen Freeholders of the said county, and shall be, remain and enure to and for the use and benefit of such county in the same manner and according to such estate, title and interest as the said Board of Justices and Chosen Freeholders or other person or persons had therein."

By section 41 it is further enacted, "That the Boards of Chosen Freeholders in the several counties of this State, and their successors in office, shall have full power and authority *to sell and convey* any lands, tenements, hereditaments, goods and chattels holden or hereafter to be holden by them, for their respective counties, they appropriating the proceeds of such sale or conveyance to the legal use of such county."

Full provision is made in the general act aforesaid, for the raising of moneys annually by tax for all the purposes of the act, and provision is also made for the raising of money by tax for said purposes, at any special time different from that of levying the regular tax, section 13.

These statutes, apart from the power which necessarily belongs to the board in its very nature, clearly authorize the board to purchase and hold the lands in question, and to raise moneys by tax to pay therefor.

(The needs of the county are of course within the judgment of the board.)

Hudson county is one of the two largest counties of the State, having a population by the State census of 1875, of 163,000.

The very necessities and duties of the county represented in the corporation require the exercise of the power to purchase lands for court house and county offices. Provision for the administration of justice is one of the necessary duties of the county.

7 Ohio, 109, Hamilton Co. v.
Dillon Mun. Corp. (2 ed.) sec. 55, note.

The power to tax for certain purposes also implies the authority *to purchase* for those objects, and the power to purchase implies the power to purchase *on credit*.

1 Dutcher, 297, Bigelow v. Amboy.
Dillon M. C. sec. 397.
33 N. York, 336, LeCoutelex v. Buffalo.
2 Keyes, 607, Woolsey v. Rondout.
29 N. York, 212, Meach v. Buffalo.
14 N. York, 356, Ketchum v. Buffalo.

The power to purchase also carries with it the right to give evidences or obligations of indebtedness for the consideration.

19 Wall. 469, Mayor v. Ray.
14 N. York, 365, Ketchum v. Buffalo.

We then have a public corporation with all the implied powers necessary for the proper purposes of the county, and besides the express power to purchase and hold land for, and to build court houses, and to tax therefor.

The board then, could undoubtedly make this purchase, and upon credit, giving these obligations as evidence of the indebtedness for the consideration, unless such purchase becomes illegal and void by the acts of 1874 and 1876.

As already stated this power is not controverted.

B. What then was the intention of the Legislature in the passage of the acts of 1874 and 1876, and their effect upon the purchase?

Do these acts or either destroy the existing power to purchase, and upon credit, and make the contract void?

1. As to the act of 1874?

a. This is only an act to regulate the *actual expenditures of money* within the fiscal year, and is not intended to operate upon the validity of a contract. The act may operate upon the members of the board, but not upon those who sell property to the county. If the board should purchase for the use of its alms house and insane asylum one hundred barrels of flour, *payable within the fiscal year*, and it

should turn out that the proceeds of the tax levy for that year were all exhausted before the time for payment arrived, can it be contended that the contract would be *ultra vires*, and the board not liable? The validity of the contract does not depend upon the actual possession of funds to pay. Suppose these bonds in question had been made payable six months after their date (within the pending fiscal year), and when the time of payment had arrived, the board could not pay *then*, nor during the fiscal year, can it be that the contract would be void by reason of that fact? In such a case there would be a necessity to raise the money therefor within the next year, but the liability to pay would exist. The time stipulated for payment can have nothing to do with the *illegality* of the contract. How easy instead of exercising that prudence which characterised this transaction by making the time of credit run into the next fiscal year, would it have been for the board to have agreed to pay within the pending year, and then allow the debt to remain unpaid until the succeeding year? By the act of 1874, sec. 1, the fiscal year of the board was changed from May 1 to December 1. The resolutions were passed December 14, 1876, just fourteen days after the fiscal year had commenced (December 1, 1876.) The annual tax levy for that fiscal year must necessarily have been ordered before July 15, 1876, although there is no averment in the bill or any evidence in the case showing that fact, or the amount of the levy ordered—see sec. 5, act 1874. Taxes are not payable to the county collector until December 22—Rev. 1142, sec. 11—"and the said collector (being the local collector) shall pay the taxes by him collected * * * * to the collector of the county, by the twenty-second day of December in every year." The county collector was not entitled to demand the taxes for the fiscal year beginning December 1, 1876, until December 22, 1876. Besides, as is well known in all experience, there are always large delinquencies in the collection of taxes. No warrant could be issued against delinquents until December 20 of any year —Rev. 1142, sec. 12. Further—sec. 5, act 1874, says—"the expenditures * * * * in any fiscal year shall not exceed *the amount raised by tax for said year*." Does that mean the amount of the tax ordered, or the amount collected? I assume the latter, as the object of the statute seems to be to keep the actual expenditures within the money on hand.

This state of affairs is then presented: The fiscal year commences December 1; the taxes collected are not received by the county collector until nearly a month after-

wards. In the meantime contracts may be made, which can only be paid when money is received. The county may or may not receive during the year the whole of the tax levied, but probably not, the amount depending largely upon the efficiency of the officers in the different localities; *now*, can it be possible that the legality of the county's contracts depends upon an adjustment of the accounts of the receipts from taxes for the year? Did the Legislature mean that? If this were so then no person would be safe in selling anything to the county unless he first analyzed the condition of the funds in the hands of the county collector. Look at it practically, the board in all ordinary matters, acts necessarily in its purchases through committees. In a county like Hudson the public expenditures must necessarily be large; these different committees are obliged to act independently of each other in all ordinary contracts. Take purchases made by these committees without credit, but for cash in the sense of trade, which means any time within thirty days; are *unpaid* debts to be void or not, depending upon how the accounts stand for the year? The act of 1874 was merely directory to the board or its members to keep their expenditures of money within the receipts for each year, so as not to borrow, and was not intended to abridge the powers of the board to contract in their best judgment for the interests of the county, and when the contract was executed, to make it void. Let us illustrate further: suppose in this very purchase the bargain had been to pay one half cash and the other half one year after date, and the board had paid the cash and given bonds for the balance, such as Crampton now has, is it not an absurdity to say that by the act of 1874 the Legislature intended such a transaction to be void? Or suppose the board could have bargained for this property on a credit of one or more years without interest, can it be believed that it was intended to prohibit such a contract? Purchases of real estate are often made on easy terms of payment, extending over several years. If the county could have bargained to pay one-tenth *in cash* and the balance in five years, one-fifth each year, would the *credit* have made the transaction void? These suggestions show that in the nature of things, it was not the intention of the act of 1874 to avoid a contract, and the question is one of *intention* strictly. The powers of the board are all left as they stood under the general acts, with no purpose to *repeal* them manifested, but only that the board should so regulate its transactions, that the actual expenditures of money in any one year should not exceed the moneys raised for that year. This is the natural con-

struction of the statute. The doctrine of *ultra vires*, particularly where the purchase is closed, and the public have the benefit of it, and the vendor has adapted himself to the changed condition of things, is at best harsh, and should only be applied when inevitably required. The Court is in principle asked to say that whenever the contract made in a pending year exceeds the ability of the county to pay in actual money, that instead of sending it over to the ensuing year, for the consideration of the board, as an honest debt, and to make provision for it, the debt should be repudiated, and the contract declared illegal and void. One of these results must follow; which is just? which is reasonable? which is according to the probable intent of the act? The answer, it seems to me, can only be one way.

I refer to 17 N. York, 110, Weston v. Syracuse, as bearing particularly on this question of contract beyond the year and as to the word *expenditure*.

b. But the giving of the bonds did not in fact increase the expenditures for the year 1876–7, beyond the amount raised by tax for that year. The board in no sense violated the act according to any fair and natural construction of the word expenditures. This word is used as meaning "*money expended*," in the same sense that it is found in section 43 of Rev. p. 133, "That it shall be the duty of the several Boards of Chosen Freeholders in this State, in each and every year, within sixty days after their annual meeting, to cause to be made out and published in one or more newspapers circulated in their respective counties,. a full and complete account of *all their expenditures* for the preceding year."

See also supplements of 1865, Rev. 133, sec. 44. (1.) "The account required to be published by the forty-third section of the act to which this is a supplement (being general act), shall embrace a detailed statement of *all the expenditures* of said boards for the preceding year, including every description of *expenditure by items*, the amount claimed, and the amount allowed in each instance, for what purpose, by whom ordered, and *to whom paid*; also, a full statement of *all moneys paid* on account of matters incident to the war, for bounties to volunteers, substitutes or drafted men, and *to whom paid*, including discounts or commissions allowed to any person or corporation for negotiating the sale of bonds, notes or other obligations issued by said boards."

Sec. 45. (2) makes it the duty of the clerk of the board to make out and cause such annual statement to be published in the newspapers printed in the county, within thirty days after the annual meeting of the board.

The fiscal year having been changed in Hudson county in 1874, that same year, Laws 1874, p. 244, a supplement to the general act was passed, approved March 5, 1874, "That section forty-three of the act to which this is a supplement, and sections one and two of the supplement to said act approved April sixth, one thousand eight hundred and sixty-five, be so far amended as not to require the publications in the newspapers required in said sections, in the County of Hudson, but in lieu thereof, said Board of Chosen Freeholders of the County of Hudson shall, within *thirty days after the close of their fiscal year*, cause the annual statement required by said sections to be published in pamphlet form," &c. The course and character of this legislation, and adapting itself to Hudson county, show that the word *expenditures* in sec. 5, act 1874, was used only in the sense of money expended. In order to get at the meaning of the word expenditures, it is only necessary to ask—well, let us see! Did the board do anything to increase the expenditures of the fiscal year of 1876–7? The answer is at once, *No*. The word expenditures cannot be intended to mean obligations incurred, by any fitting construction. In the act of 1876, to which reference will hereafter be made, these words stand in contrast.

Laws 1876, p. 16.

c. There is no evidence in this case that the purchase violated the act of 1874. The amount raised by tax for 1876–7, is not shown. It must have been large; the purchase was consummated on the twenty-second day after the fiscal year began. Taxes were not due until that day. If the purchase money had been taken right out of the taxes then, no legal objection could have been raised. If the county had fallen short later, more money could have been ordered assessed specially, or the deficiency met in the next annual assessment; neither is there any evidence whether enough money was not left from the year 1876–7 and carried to 1877–8 to pay the bonds. If the money raised by tax or raised and on hand had been enough to cover the amount of this purchase, the mere fact that the bonds were payable beyond the year a few days, would not make the whole contract void. There is no evidence whatever of the amount raised or on hand.

d. It being true as stated by his Honor at the Circuit, "that if the board at any regular or special meeting called for the purpose, prior to the 15th of July following had included the consideration money to be paid in the amount to be raised by tax for the current fiscal year, it is difficult

to perceive any illegality in the transaction;" it is equally difficult to see how this purchase could be *ultra vires* on any principle. The taxing power in the subsequent year both in reference to the regular annual taxes and special taxes existed unrestricted for every proper purpose of the county. *There was no limitation on the amount to be raised.* A contract made *in contemplation of the taxing power* for any purpose for which it might be exercised, cannot be void, unless clearly prohibited by a statute. Take this as such a contract, and remembering that the actual money expenditures of 1876–7 in that year, were not increased by it, it requires something more than the word *expenditures* to amount to a prohibition. The failure to exercise the power cannot affect the contract. If void, it must be for reasons existing at first. Besides, in the certiorari proceedings, the Justice allowing the writ of certiorari, ordered December 27, 1876, that all further proceedings by the board be stayed, "and that the county collector of Hudson county shall not pay or cause to be paid any bonds relating to the matters in said resolutions, until the further order of this Court." Which order is still unrevoked.

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The board was absolutely restrained, but if it had not been its subsequent non-action or failure to do its duty could not affect Crampton.

e. But if the bonds are *ultra vires*, the whole contract is not void. The contract can stand apart from the bonds, and be not only subject to the action of the board to raise the purchase money by tax, but the same could be enforced. Further, it is manifestly inequitable for the Court by a decree to so destroy the relation between the vendor and vendee, *as to the body of the purchase*, as to actually prevent the board from doing justice in the particular transaction. This decree annuls the whole purchase. The bonds being evidences of debt only, can be separated from the consideration. There was no illegality in that. Contracts may be severed in many instances, the good from bad provisions. There is no reason why the county should be prevented from paying if the board think it just to do so. It has already had the benefit of all the time provided in the contract.

On the last two points see 6 Otto, 350, Hitchcock v. Galveston. This case also shows the reluctance of the Court to hold that the ordinary powers of a city may be abridged by a loose restraining clause.

On a mere question of *ultra vires*, a defect of power as

to the evidence of the debt cannot defeat the right of recovery on the consideration.

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19 Wall. 678 Pine Grove v. Talcott.

We respectfully submit that the act of 1874 in no sense affects the contract or the bonds.

The Honorable Judge below based his decision entirely upon that act, having as he says, serious doubts whether the members of the board committed any offence against the act of 1876. Notwithstanding the decision of the New Jersey Supreme Court to the contrary (see opinion), the Supreme Court held the resolutions (not the contract executed) illegal, because contrary to act of 1876. It is apparent that the two courts did not agree which statute was violated, if either.

2. *As to the act of* 1876.

This must receive a strict construction. Its object was only to reach the members of certain boards and committees, and not to disturb *disbursements made or obligations incurred*. There are two parts to the act—one in regard to the *disbursement ordering or voting for the disbursement* of public moneys in excess of the appropriation to any of the boards or committees named; the other concerning *incurring obligations* "in excess of the *appropriation and limit of expenditure* provided by law for the purposes respectively of any such board or committee." Each *member* thus disbursing, ordering or voting for the disbursement, &c., "or thus incurring obligations in excess of of the *amount appropriated and limit of expenditure*, &c., shall be deemed guilty of *malfeasance in office*," &c. The only possible application that can be claimed for this statute is in the clause as to incurring obligations in excess, &c.

This *act* (1876) was not intended to make the contract void. This question has not been touched by the New Jersey Courts (more hereafter on that.) It is a matter of indifference on this question whether the members are liable to indictment or not.

a. Whether the sale is void or not depends upon the legislative intent. It is not necessary to controvert the ordinary rule that an *act* directly prohibited by a penal statute is void, for many penal statutes in their very nature or by inferences of intent, only operate upon the offender, and do not disturb the integrity of the transaction. It is often a better policy and more just to allow a recovery for the consideration of a contract executed, than to put it in

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the power of a party who has received a benefit to repudiate, and virtually accomplish a fraud. The legislature may well shape its enactments, so as to permit justice in the contract to be done, while the public official may be punished. This is familiar law. The case of Harris v. Rummels, in this Court, 12 Howard, 83, is an illustration. The note sued on was given on a sale of slaves in Mississippi, contrary to a penal statute which imposed a penalty upon both parties. Wayne, J. says in substance, that the statute must be examined to find out whether or not the makers meant that the contract should be void or not—that it was not to be taken for granted that the legislature meant that contracts in contravention of it, were to be void in the sense that they were not to be enforced in a court of justice—also, that the exemption (of the contract) may be inferred from those rules of interpretation to which, from the nature of legislation, all of it is liable when subjected to judicial scrutiny. I invite special attention to the language of the Court on pages 84 and 85. In the Am. Law Reg. Sept., 1877, vol. 16, p. 555, is an important case to the same effect, Mowing & Reaping Co. v. Caldwell, (Indiana Sup. Ct.) and to this is a learned *Note* by Judge Cooley, in which there are various cases cited, and to which I refer without repetition, except to

36 Iowa, 546, Pangborn v. Westlake.
33 Maryland, 558, Lester v. Howard Bank.
14 Ohio, 331 Vinning v. Bricker.

Judge Cooley says, "Every case must be determined by a consideration of the terms of the statute itself." The whole note is a review of the law, and very valuable on this question.

b. The legislative intent was not to make the contract void.

Let us consider the statute.

There is no prohibition in terms against the contract. The condition necessary to the offence is, that *if* any board or committee, or member *shall disburse*, *order* or *vote*, &c.—or *shall incur obligations* in excess, &c., "then the members thereof, *thus disbursing*, &c., or *thus incurring* obligations, &c., shall be *severally* deemed guilty of *malfeasance in office*.

The statute contemplates certain things accomplished—*the disbursement* as a fact, and the *obligation incurred* as an existing liability. The offence is founded on an assumption of these facts, the *real* existence of which is necessary to create it.

The words "shall incur obligations," are very strong. *Incur*, means to become liable, and the word *obligations* is

of peculiar binding force. The objective point of the statute, is the members. If *any board* shall do thus and so, the members shall be *severally* deemed guilty. The offence is malfeasance in office. The object was to create a several official offence only, and not to reach beyond. If there is no obligation, then no crime. *A mere vote to incur an obligation in excess is not punishable.* A vote for the disbursement of moneys in excess is (see statute.) There must be an obligation incurred to make indictability. What is the legislative policy? not to punish those who deal with the board and trust the county, but to take hold of the officials, for if by reason of the contravention of a penal statute a contract of sale is void, it subjects the seller to the indirect forfeiture of his property, or rather, he is absolutely at the mercy of the vendee for the restoration of it as he cannot recover the price. *This is punishment*, and sometimes very severe, and which the act does not contemplate.

12 How. 85, Harris v. Rummels.

A construction that will make each party *pari delicto* in a sale illegal, because against a criminal statute gives an unjust advantage to the possessor of the property, and oppresses him who has parted with it. No wonder that his Honor, Judge Nixon, could not rest this case upon the act of 1876, and leave Crampton remediless. The Legislature intended only to punish the members, and not those who deliver property to and trust the board. See to what the contrary doctrine would lead. The county needs a large supply of coal for its public buildings. It becomes desirable to buy it before the winter, say, in the fall and before the close of the fiscal year. The taxes are about exhausted, yet a coal company is willing to trust the county, and does it beyond existing resources from taxes. The county receives the coal and uses it. Is the transaction void? Could the county set up illegality when sued? It is not likely that the board left alone would, but could tax payers who may think the supply extravagant, intervene on the ground that the statute made the sale void? Again, it is not practicable for the public to know of the condition of the finances of the county for the time being. That depends upon the taxes received and that may be received, and upon the moneys expended and the extent of liabilities already incurred. These may be very uncertain, particularly toward the latter part of the fiscal year, and to a large amount. It is difficult to suppose that it could have been intended that any contract should depend upon such matters of calculation. No natural construction will permit the statute to taint the contract. Its integrity is untouched.

The tendency of recent adjudication is to restrict the

doctrine of *ultra vires* to executory contracts, and not allow the defense against a recovery for the price of a consideration received. A like tendency is observable in so looking at the spirit and intention of penal statutes, as to protect and not destroy contracts. Foreign insurance companies are enjoined by statute under penalties not to do business in many other States, without complying with its terms, and yet the policies of insurance are not void. Loans made to the officers of a bank contrary to a statute imposing fine and imprisonment are recoverable, and applying the rule of intention to the statute of 1876 we submit that this sale is not void. Here is the great strength of this part of the case; but

c. The board or the bonds are not within the act of 1876? This statute was intended to fit on to existing legislation in reference to appropriations to and limits of expenditure, of certain boards and committees. For instance, Jersey City (being within Hudson county), has a charter which provides for Boards of Finance and Taxation, of Education, Public Works, Fire and Police, all distinct. Laws, 1871, p. 1095, sec. 5, and by sec. 129, p. 1147, the Board of Finance is empowered to "fix the amount to be raised by tax each year for the various purposes of this act, and the amount so fixed shall be *the appropriation and limit of expenditure for the said purposes*," &c. These last are the precise words found in the statute of 1876. The Board of Finance appropriates *to* the other boards, and the statute undoubtedly reaches these boards, because there is an appropriation *to* them. The Board of Chosen Freeholders has no appropriation to itself. There may be an appropriation *to its committees*. The board is independent and in no sense has an *appropriation to itself*. Observe the language of the statute and see how impossible it is to apply the term *appropriation* to the Board of Freeholders. Obligations incurred must be "in excess of the appropriation *and* limit of expenditure provided by law;" —must be in excess of both. This language would apply to the Jersey City boards, but would it apply to the Board of Freeholders? True, there is a limit of expenditure in sec. 5 of act 1874, but does the Board of Freeholders come within the condition of having both an appropriation and limit of expenditure? We think not. There is no justification in reading a penal statute with the word *or* for *and*, and to show how tenacious the New Jersey Supreme Court has been on this subject, see 1 Vroom, 422, State v. Drake. But if this Court should hold that this board is within that part of the statute, then the stat-

ute must be regarded in connection with the limit of expenditures in sec. 5 of act 1874, so far as Hudson county is concerned. Now take the two together, and the obligations incurred must be those which are made payable within the fiscal year, and which would increase the liabilities for that year over expenditures.

d. The only logical construction of the act of 1876 is, that the obligations incurred, in the meaning of that act, must be in excess of an *existing* appropriation and limit of expenditure. If payable beyond the pending year, that fact does not create the offence, but if created, it is only because the obligation exceeds some existing appropriation and limit without reference to the time of payment. If giving these bonds was contrary to the statute, it was because they were in excess of the tax raised for 1876–7, and not because in *advance* of a tax levy to be ordered for 1877–8. The opinion of the N. J. Supreme Court upon this *advance* idea in State v. Halsted, 10 Vroom, 402, was repudiated in the Court of Errors, November Term, 1879, in Spear v. State. Spear, one of the freeholders, had plead guilty to certain counts in his indictment which charged the obligations in excess of the year 1877–8; a nolle pros having been entered upon the counts charging the obligations in excess of the year 1876–7. Spear carried his case after plea of guilty to the Court of Errors, and the judgment was reversed on the ground that no offence was charged, that there must be an existing limit fixed in order to have the obligation in excess, &c. That being so, and there being no evidence of the fact or amount of any order by the board for a tax levy, or of the amount raised for the year 1876–7, there is no case within the act.

Such acts as 1876 are not to be extended by judicial construction. When an offence may be created with perfect *innocence*, no *intent* being required, the narrowest construction that may be made ought only to be allowed.

But whatever may be the extent of criminal responsibility, we submit that it is not the legislative intent of either of the acts 1874 and 1876 to render the contract void.

This brings us to the second leading point.

II.

The effect of the judgment of the Supreme Court on certiorari?

It was admitted on the argument below, that the U. States Court is not bound by the decision of the State Court thereon, also that Crampton is not concluded thereby. I assume that the same admission will now be made, particularly as the Court below concurred in such view—and will therefore only give the points and cases on this head in this opening brief.

The certiorari proceedings are a part of this record. The opinion of the Court is in 10 Vroom, 632, Seidler v. Freeholders. The writ was issued December 27, 1876, after the contract was consummated. Crampton was not a party to it. The statute of 1876 was approved February 7, 1876, and when this contract was made and executed, no decision of any kind on the indictments or resolutions had been made. The decision of motion to quash indictment was made June Term 1877. 10 Vroom, 403, State v. Halsted et al., and the decision in Seidler case, November Term 1877. This, therefore, was not a contract made under a preceding judicial construction. None had been given, and therefore that point is not in the case.

a. The Court expressly refrained from expressing any opinion on the validity of the contract, and hence that question is open. (See opinion in Seidler case.)

b. This being a question of contract, and within the protection of the Constitution of the United States, it could not be impaired either by *Legislative* or *Judicial* action. An erroneous judicial decision may impair a contract as effectually as a statute.

19 Wall. 678, Pine Grove v. Talcott.
16 Wall. 690, Olcott v. Supervisors.
1 Wall, 145, Bridge Proprietors v. Hob. Co.
Ibid 207, Gelpcke v. Dubuque.
1 Black, 443, Jefferson Bank v. Skelly.
State, Morris & Essex R. R. Co. v. Yard, 5 Otto, 104.

"This court construes all contracts brought before it for consideration, and in doing so its action is independent of that of the State Courts, which may have exercised their judgment upon the same subject."

8 Wall. 584, Butz v. Muscatine.

These bonds are evidences of debt of a commercial nature, and come within the domain of general law. The effect of a statute upon them is only an incident or element in the question of legal effect. If these bonds are not negotiable, the principle which is claimed to overturn them under the act of 1876, especially, would not only destroy such bonds, but those which were negotiable. Negotiability would be no protection. The question is one far reaching and especially within the power of this Court.

16 Peters, 1, Swift v. Tyson.
18 Wall. 548, Boyce v. Tabb.
2 Otto, 495, Town of Venice v. Murdock.

Equity is uniform in United States Court and not bound by State laws or decisions.

13 How. 270, Neves v. Scott.
2 Black, 501, Noonan v. Lee.

c. This decision was not of the highest Court. Such Court is the Court of Errors and Appeals, so admitted, (see stipulation.) In any case, to give any binding force upon this Court to the decision of a State Court, it should be of the highest Court—*the Court of last resort*. This certiorari case was decided by three out of the nine Justices of the Supreme Court, sitting in what is known as the Branch Court. (See Answer of Crampton, and stipulation.)

This principle is familiar and been often recognized.

2 Otto, 294, Elmwood v. Marcy.
1 Wall. 206, Gelpcke v. Dubuque.
23 Wall. 117, Secombe v. R. R. Co., are a few cases.

Any further discussion under this general head will be left to my associate, should it become necessary.

Finally. Mahlon B. Crampton, *a resident of New York*, who owns this real estate in Hudson county, accepts an offer made by the board for its purchase. He executes a deed regularly to the satisfaction of the board, surrenders possession, and the board give him its obligations to pay. He has complied in every respect with the terms of the resolutions, and the resolutions became swallowed up in the deed. Whatever power may have existed in the Courts, (and we submit there was none), to intercept the contract before execution, none can now be exercised to destroy it as executed.

We submit that the decree should be reversed.

JOSEPH D. BEDLE,
Of Counsel with CRAMPTON.

Supreme Court of the United States.

No. 1070

MAHLON B. CRAMPTON,

Appellant,

and

AUGUSTUS ZABRISKIE, *et al.*,

Appellees.

PHILADELPHIA BAR ASSOCIATION

On Appeal from U. S. Circuit Court,

For the District of New Jersey.

BRIEF OF FRED'K T. FRELINGHUYSEN,

Of Counsel with Mahlon B. Crampton.

NEWARK, N. J.:

WARD & TICHENOR, LAW CASE PRINTERS, 832 AND 834 BROAD ST.

1880.

Supreme Court of United States.

Between
MAHLON B. CRAMPTON,
Appellant,
and
AUGUSTUS ZABRISKIE, AND OTHERS,
Appellees.

No. 1070.

BRIEF OF FRED'K T. FRELINGHUYSEN.

STATEMENT.

"The Chosen Freeholders of the County of Hudson" is a body politic and corporate, and authorized to purchase any lands for the use of the county, and to vote money for building or purchasing jails, court houses and bridges.

On December 14, 1876, a preamble and resolution were passed by the freeholders; the preamble sets out the impracticability of repairing the old, and the necessity for a new court house, and the resolution directs the purchase of lands for a court house of Mahlon B. Crampton, for the consideration of $225,000, to be paid in bonds of the county, payable in one year, with interest, at seven per cent., *out of the amount appropriated and limited for the expense of the next fiscal year.* Crampton, on December 18, 1876, executed a deed for the premises to the freeholders, which they accepted, and made and delivered to Crampton their bonds, two for $75,000 each, and one for $75,750, each dated December 22, 1876, and payable with seven per cent. interest to Mahlon B. Crampton on December 18, 1877.

The property conveyed was with other lands, subject to a mort-

gage of $150,000, held by Henry Harrison, and to effect a release of the lands conveyed, from the burthen of said mortgage, Crampton assigned to said Harrison one of the said bonds, and the release was executed.

The freeholders have since held the premises conveyed, and still retain the possession of and title to the same. *Record*, p. — fol. 27.

The necessity and propriety of the purchase of this land for a court house, the fairness of the price agreed upon, and the integrity of the transaction, are nowhere questioned.

Crampton, on March 13, 1878, commenced a suit in the Circuit Court of the U. S. for the District of New Jersey, against the said freeholders, for the amount of two of the said bonds. The recovery of the amount of the bonds by Crampton is interrupted in the manner following: Three taxpayers, Zabriskie, Shippen and Harrison, on the 4th day of April, 1878, filed their bill of complaint, on the equity side of the said Circuit Court of the U. S., praying that the bonds might be declared void and be delivered up, that the freeholders might be ordered to reconvey the property to Crampton, and that he might be enjoined from sueing on or parting with the bonds; and on the first day of October, 1879, a final decree was made by the Court according to the prayer of the bill.

The bill presents two grounds for relief.

First. That three other taxpayers, Seidler, Bonnell, and Henderson, after Crampton had given his deed and received the bonds, and on December 27, 1876, obtained a *certiorari* directed to the said board of freeholders, from a branch of the Supreme Court of New Jersey, for the review and correction of the resolution authorizing the purchase, and all matters concerning and connected therewith, *so far as the same remained before said board*, and that later, and on November 22, 1877, about one year after Crampton had thus conveyed his property, the said Branch Court, by its judgment, declared *said resolution* illegal and void, and set the same aside; and the bill claims that the resolution being declared illegal, the purchase and the bonds became void, and that the freeholders should have reconveyed the lands to Crampton,

and that he should have surrendered the bonds; but that instead of doing so, the freeholders have tendered no deed to Crampton, but continue to retain and enjoy the property, and have not even attempted to rid themselves of the purchase; and that Crampton holds and has commenced suit on the bonds, and that they the complainants are afraid he will recover.

The second ground of relief is, that by reason of certain statutes, not set out in the bill, but which by force of a stipulation (*Record*, p. 24, pl. 6,) are made a part of the case; the freeholders had not power and authority to make the purchase, or to give the bonds.

The provisions of the statutes relied on, briefly stated, are as follows: The freeholders are elected each year for one year, and the director for two years, and until successors are appointed. The official year commences the first Tuesday after the first Monday in May, (Laws 1875, p. 324; Pamph. of Statutes, p. 15. The board of freeholders *may* fix the amount to be raised by taxes prior to July 15, in any year, for the next fiscal year, which begins the first of December following, (Laws 1874, p. 202; Pamph. of Sta, p. 13.) The freeholders may also at any time when they consider a tax necessary for any authorized purpose, order such tax, (Rev. Stat. of N. J., title "Chosen Freeholders," Sec. 13, p. 129; Pamph. of Sta., p. 4.) A statute applicable to Hudson county only, provides that "That the expenditures of the board of chosen freeholders, in any fiscal year, shall not exceed the amount raised by tax for said year." (Laws 1874, p. 204; Pamph. of Sta., p. 14.)

By a general statute, it is made a malfeasance in office, to be punished by fine or imprisonment, for the board of chosen freeholders, township committee, board of aldermen, board of education, board of commissioners of any county, township, city, town or borough, or of any committee, or member of any such board or commission, to disburse, order, or vote for, the disbursement of public money, or to incur obligations in excess of the appropriation and limit of expenditure as now or hereafter appropriated and limited by law, (Laws 1876, p. 16; Pamph. of Sta., p. 21.) The complainant's case on the statute is this: The freeholders came into office May, 1876.

In July they fixed the amount of taxes for the next fiscal year, which commenced December first, 1876, and ended December first, 1876. On December 22d, 1876, they gave the bonds and made them payable December 18, 1877, after the termination of the fiscal year in which the bonds were given, that is, they were payable eighteen days after the next fiscal year beginning December 1, 1877, had commenced. The taxes for the fiscal year commencing December 1, 1877, would usually be ordered in the July occurring between the date and maturity of the bonds, that is, in July, 1877. Consequently, it is claimed, that there being when the bonds were given no taxes ordered or raised for the year in which they were made payable, that the freeholders in violation of the last two statutes named made an expenditure in excess of the taxes raised for the year, and that the bonds are therefore *ultra vires* and void.

We shall insist that the bonds are valid, and that if they are not, Mr. Crampton is entitled to receive the consideration agreed upon for the land.

But before doing so, we submit that the ground for relief, chiefly insisted on in the bill, namely, the judgment on *certiorari*, does not affect Mr. Crampton. After Crampton had parted with the title to the lands forever, received the bonds, substituted one of the bonds he had received as security for a debt, so as to relieve the lands from the mortgage, three taxpayers obtained from a branch of the Supreme Court of New Jersey, which itself is not a court of last resort, a writ of *certiorari*, directed to the freeholders, "for the review and correction of the resolution authorizing the purchase and all matters concerning and connected therewith, *so far as the same remained before said board.*" Crampton was not a party to the proceedings, the legality of the bonds was not considered, and the judgment rendered a year after the transaction was closed, declared the resolution alone illegal and void.

The Court says in *Siedler* vs. *Freeholders*, 10 Vroom, 632, which is the case on *certiorari* referred to: "The question at

"present is, not whether the obligations (the bonds) exist, but "whether these resolutions are lawful, and that question is to be "answered by a consideration of their legality at the time of their "passage."

"* * * Our decision is not upon the validity of any claim "which he (the holder of the bonds) has made, but relates solely to "the legality of the resolution. It is more '*in rem*' than '*inter* "*partes*' for the affirmance or reversal of this corporate act. In "such a cause, our jurisdiction is complete, when we have brought "the subject matter within our power by a writ which has given "the corporation notice of our purpose, and does not need that we "should also have before us *those who have* acquired or attempted "to acquire rights on the basis of the action under review."

Crampton's right to insist on the validity of the purchase and of the bonds, is not affected by this adjudication setting aside the resolution, *because* the resolution was set aside as being, in the opinion of the Court, an invasion of statutes which are directory to the freeholders, and which they were bound to obey, but which statutes are not a limitation on the powers of the freeholders which they can plead to avoid their contracts, especially when executed, *because* the validity of the purchase or bonds was not before the Court, *because* the judgment does not assume to affect them, and the opinion of the Court guards against such conclusion, *because* the resolution had been executed, and *because* Crampton was not a party to the proceedings. However important the resolution may have been to the freeholders as a justification of their action, the deed could have been taken, and the bonds given without the resolution, so far as Mr. Crampton was concerned; it was and is not necessary to their validity; as a contract to convey is uniformly held to be swallowed up in the deed, so is the resolution. If the freeholders should by resolution direct a contract to be made for building a bridge, and after the contract was executed and bridge built, should themselves rescind the resolution, or if the resolution should be declared invalid by a proceeding to which the contractor was not a party, it would be strange, indeed, if the annuling of the resolution was held to affect the contract. The same is true of an authorized purchase of lands fully executed, and

when the land by the general depreciation of value has, or may have depreciated in value. The bonds may, or may not be good, but the setting aside the resolution does not affect them. These resolutions were, so far as Crampton was interested, "*functus officio*," as soon as the deed and bonds it authorized were made and accepted.

I.

We submit that the bonds are valid securities in the hands of Mr. Crampton.

We have a right to claim that the court house was necessary, the price a fair one, and the whole transaction marked by perfect integrity. The suggestion of the counsel of the freeholders, that this important fact be ignored, cannot be adopted, unless we are disposed to treat of hypothetical and abstract questions, rather than the actual concrete case before us; neither is there anything in the stipulation of counsel, as intimated in the brief of freeholders' counsel, that gives the slightest pretext for the suggestion that the integrity of the transaction is to be left out of the case, (*Record*, p. 24.) The chosen freeholders, having retained the title and legal possession of the lands up to the present time, and having resisted the effort on the part of three taxpayers to have the resolution for purchase set aside on *certiorari*, now file an answer in this suit, appear by counsel and ask that the bonds be declared void; but in their answer they neither aver or intimate that the purchase of the lands was not necessary, or that the price was not fair, or that the whole transaction was otherwise than a perfectly honest one.

That the transaction was a fair one is a legal conclusion.

1. The freeholders were unquestionably empowered to purchase the land for the court house.

The counsel for the freeholders introduces into his brief a statement of facts which nowhere appears in the Record, and special statutes which have not before been presented, as the case shows.

The brief states that by a general act of the legislature of New Jersey, passed Feb. 13, 1798, (*Paterson's Laws*, p. 265,) the chosen freeholders of the several counties were incorporated, and

that the act gave the chosen freeholders the power to purchase land and build court houses, &c., and that such power has been continued in subsequent revisions of the general laws of New Jersey, and that such was the general law of the State on Feb. 22, 1840, when the county of Hudson was created, and that such is the law to-day. That the 2d section of the act creating Hudson county, Law of 1840, p. 65, provides "That the said county shall have and enjoy all the powers * * which any other county of this State *doth* or may enjoy." That the 8th Sec. of said act provides that the chosen freeholders of Hudson county shall be a body politic * * and shall exercise and enjoy all the rights, powers and authority that the chosen freeholders of the other counties of the State *are* or shall be entitled to.

This statement of the law is entirely correct. And the brief of the counsel of freeholders adds that, "had these provisions of the act of 1840 (creating Hudson county) stood alone, it might well be said that the general power was vested in the board to purchase a site for the court house."

We submit that there is nothing in the said act of 1840 contradictory of or inconsistent with the power which it is admitted is given by the sections of the act referred to; and it would be strange if the latter part of a carefully considered act repealed the former part.

The counsel relies on the 13th and 19th sections. Hudson county was created forty years ago, and interest was taken in the question as to in which township or city the seat of justice should be: and the 13th section of the said act of 1840 enacts that the "seat of justice" shall be in the township or city which, at a popular election to be for that purpose held, shall be designated by a plurality of votes, and that the township or city being thus designated, the chosen freeholders shall determine therein the particular site of the court house and other public buildings; and by the 19th section of said act of 1840, it is enacted that the site being thus determined upon, the chosen freeholders shall purchase the land and build the court house and raise the money by a tax or loan.

There is not one word in the thirteenth or nineteenth sections that repeals, and nothing that modifies the corporate powers ad-

mitted by the previous sections and by the general law to be conferred on the chosen freeholders of Hudson, excepting the provision that the "seat of justice" should be in that township or city designated by a plurality vote. And there is no pretence that there is any intention to remove the seat of government from the township so designated.

The general power given to the chosen freeholders of the several counties of the State is no more exhausted as to Hudson county than as to the other counties of the State. The power is not to build one court house when a new county which is to continue for all time is created, but is to build court houses, as time and growing population and decay of buildings may make requisite. Counsel of appellees refers to *McGavisk* vs. *State and Erie R. R. Co.*, 5 Vroom, 509, for the doctrine that a special act repeals a general act. The law in that case is correctly stated, and is this: "When a later special law is positively repugnant to a "former general law and not merely affirmative, cumulative, or "auxiliary, it defeats the older law, *pro tanto*, to the extent of "such repugnancy." The law of 1840 modified the general chosen freeholders' act that existed before 1840, so far as to make the selection of the seat of government for a new county depend on a popular vote, not on the discretion of the freeholders in determining where the public buildings should be.

But if the fact that the act of 1840, creating Hudson county, and providing that an election should determine where the seat of justice should be, had the effect of depriving that county of the powers as to court houses, conferred generally on the chosen freeholders of the several counties of the State, still it is true that the chosen freeholders of Hudson have the power to purchase lands for, and to build, the new court house which the increase of population during a period of forty years renders necessary.

By the second section of an act entitled, "An act to incorporate the chosen freeholders in their respective counties of the State," approved April 16, 1846, *Nixon's Digest*, 109 and 110, it is enacted that the chosen freeholders may purchase lands for the use of the county; and by the fourth section of that act it is enacted that they may vote money for the building or purchase of court houses.

If the express power to purchase lands was not given, the express power to build court houses will carry with it the power to purchase land to build upon.

These provisions were in 1846, after the act of 1840, creating the county of Hudson was passed. March 23, 1875 an act was passed entitled "An act to reorganize the board of chosen freeholders of the county of Hudson," the object of which law is well expressed by the title. The twelfth section of that act (Laws of 1875, page 330, Pamph. of Sta., p. 20,) provides that the board of chosen freeholders of Hudson county, as elected and "organized under this act shall be vested with all the powers and authority, rights, privileges and duties as are now vested in and imposed upon the present board of chosen freeholders in said county, and that all laws and parts of laws, statutes and parts of statutes now in force, and in *anywise* applicable to the board of chosen freeholders of said county of Hudson, either public or private, *general* or special, be and the same hereby are in all respects and provisions, continued in full force, and are made applicable to the board of chosen freeholders elected in accordance with the provisions of this act, except so far as the same may conflict with or be inconsistent with the provisions of this act." The act makes no reference to court houses or the purchase of lands for that purpose, and there is therefore nothing in the general law in the revisions of 1846, giving the power to build court houses, that is inconsistent with the act of 1875, and this act of 1875 clearly recognizes the fact that the aforesaid general provisions of the revisions of 1846 apply to Hudson county.

The counsel of the board of chosen freeholders, in his official opinion given to the board of chosen freeholders of Hudson before the purchase in question was made, after referring to the said second section of the act of 1846, says: "Under this section, the board "have power to purchase lands on which to erect and build a new "court house, whenever in the judgment of the board, a necessity "arises for such purpose. This power is expressly granted by the "second section of this act." And again: "The board have au- "thority to purchase lands for such purposes. The authority is "granted in express language, and does not admit of any doubt "whatever." *Record*, p. 35.

Judge NIXON in his opinion in this case, says: "It (the board "of freeholders,) was the lawful body to determine the needs of "the county in this respect, and the second section of the chosen "freeholders' act imposes no limitation upon their discretion, ex- "cept, perhaps, the needs of the county."

We have then clear statutory law giving the freeholders the power to purchase, and that law confirmed and approved by the official opinion of the counsel of the freeholders and of the judge below.

2. We claim nothing for the bonds as negotiable paper, they are payable to Crampton alone; they are bonds given in payment of a purchase the municipal corporation was expressly authorized to make, entirely within the scope of their authority; the sufficiency of the consideration that passed from Crampton for the bonds, is nowhere questioned.

3. The only objection that can be made to the bonds arises out of the statutes of 1874 and 1876.

As to the statement of the brief of the counsel of the appellees, that, independent of the acts of 1874 and 1876, all contracts or credits, for which no appropriation had been made, are *ultra vires*, will as we consider those statutes, sufficiently appear to be contrary to authority.

The 4th section of the general chosen freeholders' act, (Revision, p. 128, Pamph. of Sta., p. 1,) to which counsel refers to sustain the above position, does not contain a word on that subject, it simply gives the freeholders authority to raise money for authorized purposes, to be expended under their direction, and for anything that there appears, the money may be expended in cash payments or in the discharge of credits.

It should be borne in mind that the object of the acts of 1874 and 1876, is not in any manner to limit taxation; such it is clear is not the object of acts, because they contain no provision having any such effect. The important duty of determining what amount of taxes shall be raised must be lodged somewhere and it is reposed on freeholders chosen, that amount the freeholders *may*

fix on July 15, prior to the beginning of the fiscal year, on December the first following, (Sec. 5, Act of 1874, p. 204, Pamph. of Sta., p. 14,) or the freeholders may from time to time, whenever they find money needed for authorized purposes, raise such money by tax. (Revision, Sec. 13, p. 129, Pamph. of Sta., p. 4.) These acts of 1874 and 1876 do not affect taxation, and all remarks about taxation becoming confiscation are out of place.

The object of the acts is that money to be paid out in any year shall not exceed the appropriation of that year. And these consideration, well nigh solve the question before us.

The statutes of 1874 and of 1876 simply provide that the expenditures *of the fiscal year* shall not, either by payments or by the incurring of obligations, exceed the amount raised by taxes for that year, or the appropriation or limit of expenditures provided by law for the purposes of the board.

The act of 1874, which applies only to Hudson county, provides that "the expenditures of the board of chosen freeholders *for any* "*fiscal year* shall not exceed the amount raised by tax for *such* "*year.*" The plain words of the act state all we claim, to wit—that the object of the law is to prevent the expenditures of any fiscal year exceeding the appropriation, and is not to prevent an honest expenditure for an authorized county purpose being carried by credit into another year, in which year it will be the duty of the freeholders, as it is in their power to raise by tax the money, so that in no year will the expenditure exceed the amount raised by tax for the fiscal year.

The act of 1876, which applies generally to the municipalities of the State, carries out the same purpose and provides that *if any* officer shall disburse, order or vote for the disbursement of public money, or incur obligations in excess of the amount appropriated, or of the limit of expenditure, that is, the appropriation, or the expenditure limited for that year, he shall be guilty of malfeasance in office, and punishable by fine or imprisonment.

The amount is raised by taxes for a given year, and the expenditure for that year may not be in excess of the taxes raised for that year, either by paying money, or by giving obligations. Each act says so. The act of 1874 says: "The expenditure *for any*

fiscal year shall not exceed the amount raised by tax for such year." The act of 1876 says the obligations incurred shall not be in excess of the appropriation, or of the expenditure limits, that is, appropriation or expenditure limited for that year. There is no appropriation or limit of expenditure except for one year.

The duty is imposed on the freeholders to provide proper jails and court houses, and they are at common law criminally liable if they do not perform the duty. The court house will, say, take two or more years to build. They may lawfully direct that the lands be purchased, and that a part of the payment therefor be made by a bond and mortgage payable the next year. They may lawfully direct that a contract be made with the builder that so much of the work shall be done in one year, when he shall have a partial payment, and that the building be completed the next year, when he shall be paid the balance. And all the duty of the board of freeholders, who are a continuous body, and both make the expenditures and fix the amount to be raised by taxes, is to see to it that the expenditures thus authorized by them for a work, within the scope of their authority, shall be provided for by the taxes to be raised when the expenditure accrues, or the obligation falls due; this being done, it is true as the statutes require, that the expenditure does not exceed the taxes raised for the fiscal year, and the obligation is not in excess of the appropriation or expenditure limited. There is not a word in the statutes that forbids the freeholders from extending the payment of such work as they are authorized and even required to perform, and which from its nature must be expended in more than one year, over into another year, provided that the freeholders see that the taxes raised, the appropriation or the expenditure limited (which ever it is called) are in such year provided for the payment.

The freeholders, unless prohibited, (as they are not) had the right to purchase the land and build the court house *on credit*. *Dillon on Mun. Corp'ns* says the current of authority is that mu-

nicipal corporations may *borrow money* to purchase the lands and to erect public buildings which they are authorized to erect.

Dillon, Sec. 81 and 82, p. 127.
Bank vs. *Chillicothe*, 7 Ohio, part II., p. 31.
Mills vs. *Gleason*, 11 Wis., 470.
State vs. *Madison*, 7 Wis., 688.
Clark vs. *Jamesville*, 10 Wis., 136.

The proper constituted authorities of a municipality may bond the corporation whenever they have power to act in the premises.

Cincinnati City vs. *Morgan*, 3 Wall., 275.

A vote of the people authorizing the building of a court house carries with it the right to borrow money to build it.

Lynde vs. *The County*, 16 Wall., p. 6.

The freeholders have the right to make notes or bonds for authorized work or purchase, subject to equitable defences. On this point the Court was unanimous.

Mayor vs. *Ray*, 19 Wall., 468.

It is true, however, that there are cases that are contrary to this current of authority, and hold that the municipality may not, for the purpose stated, borrow money; but there is no conflict of authority as to the position that the municipality may do their work *on credit*. There is a great difference between *contracting a debt* in the prosecution of a legitimate corporate purpose, and *borrowing money* for that purpose. In the one case, the *application of the credit* is secured to the advancement of the authorized object, while *money borrowed* is liable to be lost or to be devoted to illegitimate purposes.

Note to Sec. 82 of *Dillon on Mun. Corpns.* There is no question that the freeholders had the right to make this authorized purchase on credit, (as they did,) unless restricted by the statutes. And there is not a word in the statutes of 1874 and 1876, or any other, prohibiting a contract by which the freeholders gain a credit of eighteen days beyond the termination of the fiscal year in which they made the purchase.

Weston vs. *Syracuse*, 17 Hill., 110, was this: The statute provided that if the Common Council should *authorize* any expendi-

ture for any purpose, in any year, exceeding the amount of the *annual* tax levy, the alderman voting to contract such debt should be individually liable to the creditor, and the city should not be liable. The contract was made by the common council for work to be performed during the year *succeeding* that in which the contract was made. The Court held that this provision of the statute did not prevent the common council authorizing an expenditure to be met in another year. This construction to such statutes is adopted in the text of *Dillon on Mun. Corpns.*, Sec. 86, p. 131. This is the reasonable construction given the law by the counsel of the freeholders when the purchase was made. He says: "It would "be legal for your board to pay, for lands purchased, out of the "*next* year's appropriation, and to make such provision now for "that purpose; either to pay out of moneys collected from the tax "appropriation of the fiscal year of Dec. 1, 1877, or by issuing a "temporary loan bond to the seller or vendor for the amount of "the purchase money, to be paid out of the tax appropriation of "such fiscal year aforesaid; but, of course, this purchase money "or bond, together with the other expenses and obligations of the "county voted for in that year, must not be allowed to exceed the "the amount appropriated." *Record*, p. 36.

If the freeholders in July, 1877, in fixing, as it was their duty to do, the taxes to be raised for the fiscal year, which commenced December 1, 1877, had made provision for these bonds which fell due December 18, 1877, eighteen days after the fiscal year commenced, there would be no violation either of the statute of 1874, or of that of 1876, for there would be no expenditure and no obligation in excess of the taxes raised, or of the appropriation or of the expenditure limited.

Judge NIXON in this case so properly declares the law. He says, "the contract for the purchase was consummated on the 22d "December, 1876, and if the board at any regular meeting, or "special meeting, called for the purpose prior to the 15th of July "following, had included the consideration money to be paid in "the amount to be raised by tax for the fiscal year, it is difficult "to perceive any illegality in the transaction." *Record*, p. 51.

The board had then the right to give the bonds December 22,

1876, payable eighteen days after that fiscal year ended, and the illegality was that the board of freeholders did not provide the money to pay them in the fiscal year commencing 1877. And here let it be observed *that Mr. Crampton is in no manner responsible for* that neglect (if it be so) of the board. December 22, 1876, the board of freeholders had the right to make the purchase and to give the bonds. Mr. Crampton then parted with his property forever; his rights were then fixed. To urge that the board is not liable to pay the bonds because it failed to order the tax is to plead their own wrong. When a municipal corporation is acting within the scope of its authority, it is liable to pay damages for an injury to individual, and to be indicted when the public is concerned, for any misfeasance or neglect; it is not so when it is acting outside of its authority. *Dillon on Municipal Corporations*, Sec. 766, Secs. 745-6. The members of the board may be liable for a violation of duty, but they cannot render the bonds invalid by their own neglect in not making the amount of taxes raised, the appropriation or the limit of expenditure, (using all the phrascology of the two statutes,) equal to the amount of the expenditure made for the fiscal year in which the bonds were to be paid, commencing Dec. 1, 1877. It comes to this, the bonds were good when given, but as the freeholders neglected to raise the money to pay them at maturity, the defence of *ultra vires* is a good one. That proposition is not true because it contradicts itself. And here we might rest this case.

But is it true that eighteen days after the fiscal year beginning Dec. 1, 1877, commenced, there was not money in the treasury to meet these bonds? No such essential fact is either alleged or proven. It must be imagined. The learned judge below assumes this fact. He says, "They incurred this debt, and *so far as the case reveals*, made no provision for its payment." *Record*, p. 51, fol. 136. Counsel for the freeholders say that Mr. Crampton cannot urge this consideration without showing that the freeholders in fact had the money when the bonds fell due. We answer that objection, by saying that we take it, that if the bonds of the board of freeholders are to become *ultra vires* and void because the board of freeholders had not the money to pay them, that fact must affirmatively appear.

It was the beginning of the year and the treasury must have then been full, and if so, this claim authorized by the law and by the freeholders could have been paid, and no statute violated; but it is argued that as the amount of taxes for the fiscal year, commencing December 1, 1877, were generally (not necessarily) ordered before July 15, 1876, and as the purchase was not made until December 22, 1876, that the amount ordered in July to be raised for the following fiscal year was for other purposes than to pay these bonds; but we answer it does not appear that there was not enough money carried over from the year beginning 1876, to the year beginning 1877, to pay the amount of the bonds.

And further, if there was not enough paid over from 1876 to 1877, to pay the bonds, the freeholders had abundant power even after the fiscal year, beginning 1877, had commenced, to raise more money for that year, so as to supply that which would have been required to pay the bonds. The 12th section of the act of 1875, (Laws, 330, Pamph. of Sta., p. 20,) relative to the freeholders of Hudson county, recognizes the fact that the general acts applicable to the boards of chosen freeholders of the State apply to the freeholders of Hudson, and the 13th section of the general act, relative to freeholders, (Rev. Stat. of N. J., p. 129, Pamph. of Sta., p. 4,) expressly provides that when the freeholders *at any time* think a tax necessary for authorized purposes, they can raise it. The bonds on December 18, 1877, should have been paid out of the treasury of the county, and more money, if necessary, should have been raised, so that it would not in any sense be true that the expenditure arising from the payment of these bonds would have been in excess of the amount raised by taxes. Only eighteen days after the fiscal year commenced the money must have been there, and if it was wanted for other purposes, more tax could by law, *at any time*, have been raised.

Three taxpayers, on a certiorari proceeding to which Crampton was not a party, obtained an order forbidding the payment. *Record*, p. 27.

That order restraining the freeholders may be a good excuse for their withholding payment, but the conclusion sought to be reached from the mere fact of non-payment, that there were not

funds to pay the bonds, and that they were consequently in excess of the money raised by taxes, and *ultra vires*, cannot be maintained. The validity of Crampton's bonds does not rest on any *res inter alios acta*.

We do not recognize the possibility of the Court's considering that the act of 1874 is anything more than an inhibition against making the expenditures of the fiscal year exceed the taxes of that year, because acts so says, thus: "The expenditures of the "board of chosen freeholders *in any fiscal year*, shall not exceed "the amount raised by tax for said year." And the act of 1876 only imposes penalties on officials to induce them to effectuate that purpose.

But the act of 1876, while to the same effect as that of 1874, is in different language. It says, if any officer of the various municipal bodies named shall disburse, order or vote for the disbursement of public money or incur obligations in excess of the amount appropriated, and limit of expenditure as now or hereafter appropriated and limited by law, said officer shall be deemed guilty of malfeasance in office and be subject to fine or imprisonment.

The courts of New Jersey in the *State* vs. *Halsted*, 10 Vroom, 402, have held that the act of 1876 made the director of the board of freeholders liable for a misdemeanor for executing the bonds in question which fell due after the fiscal year in which they are made, but by no means intimate that the bonds are invalid.

This decision as to the directory effect of the act of 1876 on the officers of the corporation (while not affecting the validity of the bonds) I submit is erroneous, *because* authority to build a court house was authority to borrow money to build with, (16 *Wall.*, p. 6,) and the proper authorities of a municipality may bind the corporation whenever they have power to act in the premises, (3 *Wall.*, 275) and freeholders have power to make notes for authorized expenditures always subject to equitable defences, (*Mayor* vs. *Ray*, 19 Wall., 468,) and because of the universal rule that municipalities, even if the right to *borrow money* be questioned, have always the right to make authorized purchases *on credit*; and because

there is not one word in the statute that takes away this established right to purchase on credit; and because if the act of 1876 did take away the right to purchase on credit, such an inhibition would not extend to the authorized work of the corporation, such as keeping streets in order, and providing public buildings, (*Reynolds* vs. *Shreveport*, 13 La. An., 326, 1858, Dillon, Sec. 88,) and would not extend to those "liabilities which the law casts on corporations, and applies only to contracts voluntarily created."

McCrakin vs. *San Francisco*, 16 Cal., 561, 1860. *Dillon*, Sec. 89.

Hitchcock vs. *Galveston*, 6 Otto, 341, holds that "provision of a charter that the city council shall not borrow more than $50,000, does not limit the debt of the city, nor prohibit the council from entering into a contract involving an expenditure exceeding that amount, for special improvement, such as the grading and paving of streets, and the construction of sidewalks, which are authorized by the charter." To the improvements named in this case, might be added, erecting public buildings.

This New Jersey decision, however, in no manner affects the validity of the bonds, and does not assume to.

The statute, if the construction given it by the State Court is correct, is only a directory provision, and not a limitation of power.

Dillon on Municipal Corporations, Sec. 89, says a provision directed that the "council shall not create, or permit to accrue, any debts or liabilities which shall exceed a specified sum, has been considered to have no relation to liabilities which *the law casts* on the corporation, but the provision is to be regarded as directory simply, and not as a limitation on the *power* of the council to create debts."

The misdemeanor created by the act of 1876 is for voting for a resolution which, if adopted, *would* incur an obligation, and is not for voting for a resolution which, if adopted, would not incur an obligation.

The Legislature knew that to have enacted that contract for authorized expenditures, even when executed, should be void, if the prior liens on the taxes raised exhausted the amount raised, would

destroy the credit of the county, and that credit is a valuable quality of the municipality affecting the price of every commodity it would purchase. They knew such a law would derange society. Had the Legislature intended that the contracts which carried the credit over the fiscal year, and "incurred obligations" for authorized expenditures eighteen days after the fiscal year should be *void*, it would have said so, and the fact that it did not say so is conclusive that it did not so intend.

The act of 1876 might have enacted that the board of freeholders should be indictable if it contracted a debt payable after the fiscal year in which it was contracted, (*Dillon Mun. Corp'ns*, Sec. 745) as it would have done if it had intended the contracts to be void, but the act does not do so; the penalty for the offence is against the members, not against the corporate body—the penalty is for an individual, not a corporate offence. There is nothing in the liability of the *members* to the penalty that tends to the invalidity of the contracts of the corporations for authorized purposes. We know of no such ruling.

Contracts in violation of usury laws, gaming law, contracts "*mala in se*," are void; but when the law to which the penalty is attached is a mere regulation governmental or municipal, especially if the act, as here, is neither prohibited or declared void, contracts in violation of such regulations are not void. The statute of 3 H. 8 prohibited surgeons from practising without a license under a penalty. One violating the statute was subject to the penalty, but he could recover his fees. *Gremare* vs. *Le Clere*, 2 Camp., 144. The excise law made it a penal offence for any one to sell tobacco who had not been entered as a dealer. Yet in a case where there was no fraud on the revenue laws, one not so entered, while subject to the penalty, could recover for the tobacco of the vendee.

Johnson vs. *Hudson*, 11 East., 180.

It would be a strange result if this contract should be held void under the statute of 1876. The members suffer a slight penalty. The board representing the county is subject to no penalty; on the contrary it gains all it sought by the contract, and the party

contracting with the board loses the subject matter of the contract, for if the statute invalidates the contract, he could not invoke the aid of the Courts to relieve him from the effects of his wrongful violation of the statute.

The case of *Harris* vs. *Runnels*, 12 How., 79, was this: A statute of Miss. (*Hutch. Dig.*, 512.) provided that when one imported into the State a negro tainted with crime, both the buyer and the seller should pay a penalty of $100. In a suit on a note given for the slave, the illegality of the consideration was pleaded. This Court held that the intention of the statute was to inflict the penalties and not to render the contract void, and a recovery was had on the note.

We insist that the legislature did not intend to made the contracts void, *because* it does not say it shall be void; *because* it does not prohibit the contract; *because* it inflicts the penalty on individuals and not on the corporation; *because* to hold such contracts void would destroy the credit of the corporation.

This act of 1876, it is claimed, makes the bonds void under the plea of *ultra vires*, because it, as is said, takes away from the freeholders the power to perform authorized work *on credit*. A ruling by this Court, as claimed, would in principal affect negotiable bonds all over the land in the same manner that it would affect these non-negotiable bonds, for the plea of *ultra vires* is equally available against the one as the other class of bonds.

It is to be observed that it is *not* claimed that the statute of 1876, simply and standing *alone*, takes away the power of the freeholders to make authorized purchases on credit, but the claim is, that the statute of 1876, *coupled with the fact* that the money in the treasury was so subject to lien that had priority to the claim of Mr. Crampton as to make the purchase in excess of the limit of expenditure, and that purchase being in such excess was therefore *ultra vires*. We submit that it is impossible for the dealers with the corporation to know the condition of the treasury, and what liens are upon it, and their priorities of claim, and that therefore the statute cannot intend that dealers with the board of freeholders shall be subject to the statute of 1876, but that it is only a directory municipal regulation. A conveyance could not be set

aside under the bankrupt law, on the ground that the books of the grantor in fact showed him at the time of the conveyance to be insolvent, and that the grantee must be held to have constructive notice of the state of the books. That, however, would be no more unreasonable than to say, as is said in the court below, that Mr. Crampton must be held to have constructive notice of the state of the treasury which, together with the act of 1876, render the bonds *ultra vires* and void.

The appellant does not sue on commercial or negotiable paper but he nevertheless is a *bona fide holder for value* of the bonds, and he had just as good a right to rely on such representations as the purchasers of his land made to him about matters within their knowledge, and which could not be within his knowledge, as if he had been the holder of negotiable paper. By issuing the bonds the freeholders declared to Crampton that the condition of their treasury was such that the bonds could be paid at maturity without an over draft, and without exceeding the amount of taxes, and this *bona fide* holder for value is no more chargeable with constructive notice of the condition of the treasury than the holder of negotiable paper would be. The freeholders are as much estopped from denying their representation to this man whose property they thus took, as they would be if the bonds were negotiable.

The doctrine of estoppel and constructive notice is not affected by the negotiability of the paper, if it be in the hands of a *bona fide* holder for value. The board of chosen freeholders is the agent of the county, acting within the scope of its authority in making the purchase, and its representations binds its principal.

In *Bigelow on Estoppel*, (2d Ed.) ch. 16, p. 432, (1 Ed.) p. 456 we have this well put proposition: "Where the principal has clothed his agent with power to do an act, upon the existence of some extrinsic fact necessarily and peculiarly within the knowledge of the agent, *and of the existence of which the act of executing the power is itself a representation*, a third person dealing with such agent in entire good faith, pursuant to the apparent power, may rely upon the representation, and the principal is

estopped from denying its truth to his prejudice." The following are cases of estoppel:

N. Y. & N. H. R. R. vs. *Schuyler*, 34 N. Y., 30.
Royal British Bank vs. *Turquand*, 6 E. & B., 327.
Knox vs. *Aspinwall*, 21 How., 539.
Mygatt vs. *City of Green Bay*, 1 Biss., 292.
Miller vs. *Berlin*, 13 Blatch., 245.
Belo vs. *Commissioners of Forsythe*, 76 N. C., 489.
County of Henry vs. *Nicolay*, 95 U. S., 619.

The following are cases of estoppel and over issue:

Marcy vs. *Township of Oswego*, 92 U. S., 637.
Humboldt Township vs. *Long*, 92 U. S., 642.
Wilson vs. *Salamanca*, 99 U. S., 499.
Aurora City vs. *West*, 7 Wall., 82.
Durant vs. *Iowa County*, 1 Woolworth, 69.

The construction given by the Court of New Jersey to the act of 1876 as a directory regulation of municipal officers cannot effect the bonds or contracts in question, but if it could, the ruling of this Court in the two following cases should be adopted.

In *Township of Pine Grove* vs. *Talcott*, 19 Wall., 666, it is held that "The decisions of the highest Court of a State to the contrary will not be respected by this Court when such decisions are not satisfactory to the minds of the judges here; and when the matter in question is bonds issued *in negotiable form* by a township of that State, and now in the hands of a citizen of another State, or a foreigner, *bona fide* and for value paid."

These bonds meet all the above conditions excepting that they are not negotiable, and that, when the plea is that there was no power to make them, is an immaterial distinction.

In *Jefferson Branch Bank* vs. *Skelly*, 1 Bl., 436, it is held that "The general rule that the construction by State Courts are binding and conclusive on Federal Courts does not extend to the construction of the contracts of the State. Fidelity to the constitution requires that in State matters this Court should not follow the State Courts with whose opinion it cannot concur." The bonds in question are made by a branch of the government for governmental purposes and are as much State contracts as are any other bonds.

II.

In order to cover the whole case, admit for argument, that the bonds are void; and Crampton has a right to recover the amount of them, as the consideration for the property by him sold to the board of freeholders.

"The Board of Chosen Freeholders of Hudson County" is the agent of the inhabitants of Hudson county, for whose benefit and behoof the said agent, as fully authorized by law, for an honest and fair consideration, on December 22, 1876, purchased of Mr. Crampton lands which were necessary for the use of the county. There is no "*ultra vires*" here. But in giving the bonds the agent, it is said, transcended the instructions of law and made the payment for the lands fall due December 18, 1777, eighteen days after the fiscal year in which the purchase was made terminated. The steps by which this violation of law is sought to be established, as we have seen, are these:

The acts of 1876, it is claimed, imposes a penalty on the individual officers of the municipality, not only for making the expenditures exceed the appropriations of the current fiscal year, but, it is claimed, imposes such penalty if any of the officers vote that the municipality shall, in an authorized purchase, avail itself of a credit running into the next fiscal year, in excess of that years' appropriation. The next step in process of showing the bonds invalid is, that as the taxes for the fiscal year, commencing December 1, 1877, were generally ordered the July previous, that therefore, there was no money December 18, 1877, appropriated to pay the bonds, that therefore those members of the board who voted for the issue of these bonds were liable to the penalty.

We have shown the foregoing not to be the true meaning of the act; that if it was, the imposition of a penalty on individual members, while the act in no way prohibits, does not invalidate contracts; that if the act did render contracts generally invalid, it does not have that effect on contracts cast by law upon the municipality; that the fact that the tax for the fiscal year, commencing December 1, 1877, (as the bonds fall due December 18, of that year,) would usually be ordered the July before, does not show that the bonds were in excess of the appropriation of that year, as there may have been a balance handed over from 1876

to 1877; that in fact the treasury must have been full a few days after the fiscal year commenced, and if not so, there was power at any time in the year to raise a tax, especially for an expenditure cast by law upon the board: and that the impossibility of dealers knowing the condition of the treasury, renders the construction claimed, to wit, it is not a mere regulation, but is a limitation of power unreasonable. But if the bonds are void why should the freeholders not pay Crampton the consideration for the land? The bill of complaint shows that they since December, 1876, have held the title to the land, it is not denied that they needed it, that they were authorized to buy it, or that they obtained it at a fair price, why not pay for it? One reason given is that the resolution to purchase was vacated by the Court. That is true, but it was a year after Crampton had parted forever with his lands, in a proceeding to which Crampton was not a party; the deed swallowed up the resolution, and the purchase would have been as good had there never been a resolution.

Another reason given is, that if the bonds are void, the consideration money fell due December 22, 1876, when the purchase was made, and that the expenditure was in excess of the appropriation of that year. Such a fact is neither alleged or proven in the case. The counsel for the freeholders consider it a "stretch of assumption" for Mr. Crampton to insist that there may have been money in the treasury December 22, 1876, when the purchase was made, (for we have in the view we now take dismissed the bonds) and says, that the amount of the purchase was sufficient for the ordinary expenses of the county. The only facts that appear in the case on this point are found on pages 35 and 36 of the Record, when the counsel of the board informs them that "if the $200,000 worth of tempo-"rary loan bonds, now due, are funded under the statute of last "winter, it will leave about $890,000, including the appropriation "for the next fiscal year, commencing December 1, 1876, and ending "December 1, 1877, out of which, by loan, or by collection of tax-"es, your board must meet the county expenses, and pay for what-"ever bonds your board may purchase for the purpose aforesaid." There seems to have been money on hand when the purchase was made, December 22, 1876. But that is not for the appellant to prove. He has proven the contract of purchase and the deed of

conveyance. The freeholders set up the defence of "*ultra vires*," which is, that the board of freeholders had not power to make the purchase, because they had not the funds. Certainly they must prove their defence. Their defence is not to be assumed, and the appellant be then called upon to prove that they were in funds. It cannot be true that December 22, 1876, when the purchase was made, the treasury was not in funds, as the money for the fiscal year, commencing December 1, 1876, was not required to be paid before December 22, 1876. (Rev. Stat., p. 1142, Sec. 12.) But if it was not on hand on the 22d December, the freeholders had the power to raise money by tax *at any time.*

The counsel of the freeholders contend that the freeholders of Hudson have not the power given by the general chosen freeholders' act to levy a tax for authorized purposes *at any time*. In this we think he is in error. The 6th section of the general chosen freeholders' act, (Revision, p. 128, Pamp. of Statutes accompanying this case, page 2.) provides that the freeholders shall meet at the Court House in the several counties, at eleven o'clock, A.M., of the second Wednesday of May, annually; and the 4th section of that act provides that it shall be the duty of the freeholders at their stated and annual meeting or other meeting, to vote the money to be raised for county purposes; and the 13th section of that act, (Pamp. of Statutes, p. 4,) that money may be raised by tax *at any time* it is necessary for county purposes. That is the general law. Now the special act that applies to Hudson county simply changes the time of holding the annual meeting from the second Wednesday of May, (as it is under the general law,) to a time prior to July 15th, and in no manner divests Hudson county of the power to raise taxes at any time for authorized purposes.

The 5th section of the act of February 26, 1874, being the act applicable specially to Hudson county, (Laws of 1874, p. 204, and page 14 of Pamp. of Statutes,) says "the board *may* fix the amount "to be raised by tax for county purposes at any meeting of said "board, held prior to July fifteenth in any year." And that is all there is of it. Then, too, the 12th section of the act of 1875, (Pamp. of Statutes, p. 20, and of laws of 1875, p. 330,) provides hat the board of freeholders to be organized under that act of 1875, shall be vested with all the powers vested in the then ex-

isting board, and that all laws and parts of laws, statutes and parts of statutes, now in force and in *any wise applicable* to the board of chosen freeholders of Hudson, either *public* or private, *general* or special, shall be applicable to the board to be elected under this act of 1875; thus clearly recognizing the patent fact that the freeholders of Hudson are invested with the powers given by the *public* and *general* acts of the State relating to chosen freeholders.

We have shown too, abundantly, that the freeholders could purchase these lands on credit. The counsel of the freeholders seems to admit that municipal work is generally done on credit, but objects to the bonds, and we are not dealing with them now. And in the brief, says: "If there had been only the purchase, the consideration remaining unpaid and an ordinary evidence of indebtedness given, it might perhaps be claimed that it was a sale upon credit, and the tax levy or appropriation not exceeded either by way of obligation or expenditure," and then proceeds to states that the objection to the transaction is, that it was extended into a year for which, as he claims, no appropriation was made.

We insist that Mr. Crampton is in no worse condition for having taken the bonds, than if he had not taken them. They, at the worst, are only nullities. In his brief the counsel of freeholders claims that the "bonds" are "but certificates which show the consideration of the transaction." A vendor of real estate can, when he takes notes or certificates in payment, sue for the consideration, And if there was an empty treasury, that is no reason the consideration should not be paid. If the State Courts had so decided, and they have done nothing of the kind, such decision would not be authority here. The Supreme Court of the United States is not bound by decisions of State Courts in respect to principles of equity. *Russell* vs. *Southard*, 12 How., 139.

Again it is said that the freeholders do not propose keeping the land while not paying the consideration. It is proposed to reconvey the property, and to be discharged from paying the consideration. This would be less damaging to Crampton, but would be equally unlawful and unjust. Crampton parted with his property forever December 22, 1876; his rights were then fixed, and the purchase was lawful; he changed his securities so as to free the property from incumbrance; he has adjusted his business in ac-

cordance with the sale; he has been out of the possession for years; all property has depreciated, and there is nothing lawful or just in a reconveyance; such an offer has no other effect than that of perhaps rendering the defense a little less obnoxious.

The suggestion of the appellees' brief that what they term "*ultra vires* contracts executed," will only be enforced when the act done is beyond recall, does not aid the appellees. The act done here is beyond recall; a reconveyance to Mr. Crampton will be no recompense to him for the damage this sale will have done his business; no recompense for the depreciation of value of the land from what it was in 1876, to what it is now, all of which loss would fall on him, because and only because the title has for three years and more been out of him. This is an executed contract where the act done is beyond recall.

It is contended by the counsel of the freeholders that this case is distinguished from that class of cases where municipalities have been required to pay the consideration for work done for them, in that, the county of Hudson has not used the property. We submit that the reason municipalities are required to pay consideration for work done and material furnished, is not because of the benefit thereby done the municipality, but because of the injury that would be done the contractor or material man if not paid. The municipality may tear down the bridge, or dump the stone in the sea, but must still pay the contractor and the vendor. So here the board of freeholders purchased the land and hold title to it to-day—it is depreciated in value—the sale of the land is a factor in the affairs of Crampton, a reconveyance would by no means indemnify him, and he should be paid the consideration agreed on for the same reason given in the class of cases referred to.

And the freeholders after holding on to the title to the lands for nearly four years, vigorously opposing the effort on *certiorari* to have the purchase declared *ultra vires*, now claim the sale must be declared void, so as to check extravagance and corruption. Public policy requires that they pay for what they under authority of law, purchase, and that when what they bought is damaged and depreciated, they be not permitted to return it.

No reason can be suggested why the consideration should not

be paid by the freeholders. The consideration is measured by the bonds, and can be recovered in the pending suit under the common courts.

In *City of Memphis* vs. *Brown*, 20 Wall., 289, the Court says: "This court will not sanction the exaction of hard conditions made by a city with its contractor. The city must pay for the work done for it."

In *Hitchcock* vs. *Galveston*, 6 Otto, 341, before referred to, the validity of bonds given for work done was questioned, and Mr. Justice Strong in giving the opinion of the Court, says, p. 350:

"If it were conceded that the city had no lawful authority to "issue the bonds, described in the ordinance and mentioned in "the contract, it does not follow that the contract was wholly "illegal and void, or that the plaintiffs have no rights under it. "They are not suing upon the bonds, and it is not necessary to "their success that they should assert the validity of those instru- "ments. It is enough for them that the city council have power "to enter into a contract for the improvement of the sidewalks; "that such a contract was made with them; that under it they "have proceeded to furnish materials and do work, as well as to "assume liabilities; that the city has received and now enjoys "the benefit of what they have done and furnished; that for these "things the city promised to pay; and that after having received "the benefit of the contract the city has broken it. It matters "not that the promise was to pay in a manner not authorized by "law. If payments cannot be made in bonds, because their issue "is *ultra vires*, it would be sanctioning rank injustice to hold that "payment need not be made at all. Such is not the law. The "contract between the parties is in force, so far as it is lawful."

I submit the bonds are valid, and if they are not, Mr. Crampton is entitled to recover the consideration for the lands.

FRED'K. T. FRELINGHUYSEN,
Of Counsel with the Appellant.

In Supreme Court of the United States.

No. 1070.

MAHLON B. CRAMPTON,
Appellant.

and

AUGUSTUS ZABRISKIE et als.,
Appellees.

On Appeal to U. S. Circuit Court

For the District of New Jersey.

BRIEF OF

PETER BENTLEY,
Of Counsel with Complainants below.

DAVISON & CO., Law Printers, 19 Montgomery Street, Jersey City.

U. S. Supreme Court.

No. 1070.

Between
MAHLON B. CRAMPTON,
Appellant,
and
AUGUSTUS ZABRISKIE ET ALS.,
Appellees.

In Equity.

Brief of Complainants below.

On Appeal from Final Decree of the Circuit Court of the United States for the District of New Jersey.

STATEMENT OF THE CASE.

On December 14, 1876, the Board of Chosen Freeholders of the County of Hudson in the District of New Jersey, passed a resolution (a copy of which is in the complainant's bill), the salient points of which are,

To purchase from Mr. Crampton a plot of land for county purposes, at the price of $225,750.00.

To pay for the same out of funds to be thereafter provided for the use of the fiscal year, commencing December 1, 1877, by issuing bonds payable to Mr. Crampton one year from the date of issue, with interest at seven per cent.

On December 22d, 1876, Mr. Crampton delivered to the county authorities his deed conveying the land, and they delivered to him three bonds, two for $75,000.00 each, the other for $75,750.00, all dated on that day, payable to him (non-negotiable) on December 22d, 1877, with interest at seven per cent.

On December 27, 1876, a writ of certiorari was issued out of the Supreme Court of New Jersey, which brought up before that Court for review the resolution and all proceeedings connected therewith, and such proceedings were thereupon had that said Court declared the resolution illegal and void, and on November 22d, 1877, by its final

judgment set the same aside. The county authorities failed to take any action to reinstate it to its former legal position.

On March 13, 1878, Mr. Crampton commenced his action at law in the U. S. Circuit Court for New Jersey, to recover from the county the amount of said bonds, with interest, as the price and value of the lands.

On April 4th, 1878, the complainants below being residents and taxpayers in said county, filed their bill in equity in said Circuit Court to enjoin said suit at law, and compel Crampton to surrender the bonds, and the county to reconvey the lands.

It appears by the answer of Crampton, which is admitted by the complainants as a fact that one Henry Harrison, trustee for James Harrison, held a mortgage upon this and other property, that he released this property from the operation of that mortgage, and took an assignment of one of the bonds as collateral to his mortgage, which bond he still holds.

Before entering upon the discussion of the questions involved in this case, I will cite such particular statutory enactments of the State of New Jersey as show the powers of said county authorities, and the restrictions placed upon them, as may be necessary to the proper determination of this cause.

And first I call the attention of the Court generally to the act to incorporate the Chosen Freeholders in the respective counties of this State, approved April 14, 1846, to be found in the Revision of the Public Laws of New Jersey, passed in 1877, on page 127, and especially to the following portions of said act:

Section 2. "That said Boards of Chosen Freeholders " in and for their respective counties, and their successors, " shall be able and capable to acquire, purchase, receive, " have and hold any lands, tenements and hereditaments " * * * in trust to and for the use of their said " counties respectively."

Section 4. "That it shall be the duty of every such corporation at their stated and annual meeting, or at any " other meeting duly held for the purpose, to vote, grant, " and raise such sum or sums of money for the building, " purchasing or repairing of poor houses, jails, court houses " and bridges, the surveying and ascertaining the lines, the " prosecuting and defending the rights, defraying the public and other necessary charges, and doing, fulfilling and " executing all the legal purposes, objects, business and " affairs of such county as they or the major part of them

" shall deem adequate or proper, all which moneys so " raised shall be applied, paid and expended under the " direction and management of the said corporation."

Section 12. " That when any of the said corporations " shall pass an order or grant for the raising of any sum " or sums of money for any purpose specified in this or " any other act, it shall be the duty of such corporation to " direct, in writing, the assessors of the respective town- " ships in the said county to assess the said sum or sums " on the inhabitants and their estate, agreeably to the law " for the time being, for the raising of money by taxation " for the use of the State, * * * and shall " be collected by the collectors of the several townships in " such county."

Section 6. " That there shall be a stated meeting of " every such corporation at the place of holding the Court " of Common Pleas in and for such county at the hour of " eleven in the forenoon of the second Wednesday in the " month of May annually."

Section 38. " That the powers and authorities granted " to the several boards of Chosen Freeholders in the sev- " eral counties within this State, shall be considered to " continue in each and every board until the organization " of the new board at their annual meeting on the second " Wednesday of May, the election of new members to the " contrary notwithstanding."

In the year 1874, the Legislature passed an act to be found in the Pamphlet Laws of that year, on page 202, which provides :

Section 1. " That the commencement and termination " of the fiscal year of the Board of Chosen Freeholders " of Hudson county be changed from the first of May to " the first of December in each year."

Section 5. " That the expenditures of said Board of " Chosen Freeholders in any fiscal year shall not exceed " the amount raised by tax for said year, unless by the " spread of an epidemic or contagious disease a greater " expenditure shall be required for the protection of the " public health, and the board may fix the amount to be " raised by tax for county purposes at any meeting of said " board held prior to July 15th, in any year."

In the year 1876, the Legislature passed an act, to be found in the Pamphlet Laws of that year, on page 16, which provides, " That if any Board of Chosen Freehold- " ers, or any Township Committee, or any Board of Alder- " men or Common Councilmen, or any Board of Educa- " tion, or any Board of Commissioners of any county, town- " ship, city, town or borough, in this State, or any commit-

" tee or members of any such board * * shall disburse,
" order or vote for the disbursement of public moneys in
" excess of the appropriation respectively, to any such
" board or committee, or shall incur obligations in excess
" of the appropriation and limit of expenditure provided
" by law for the purposes respectively of any such board or
" committee, the members thereof, and each member thereof
" thus disbursing, ordering or voting for the disbursement
" and expenditure of public moneys, or thus incurring ob-
" ligations in excess of the amount appropriated and limit
" of expenditure as now or hereafter appropriated and
" limited by law, shall be severally deemed guilty of mal-
" feasance in office, and on being thereof convicted, shall
" be punished by fine not exceeding one thousand dollars,
" or imprisonment at hard labor for any term not exceed-
" ing three years, or both, at the discretion of the Court."

The case will be discussed upon the part of the complainants below under two branches :

I.

The contract between Mr. Crampton and the county authorities was ultra vires.

II.

Taxpayers can maintain a bill in equity in their own names to set aside an ultra vires contract made by corporate authorities, when those authorities fail to perform that duty for them, if the parties to the contract can be returned to their original positions, and it matters not that the contract has been executed.

As to want of power.

I desire to call attention to the fact, that power to purchase lands for all county purposes is granted by section two of the act incorporating county authorities. That a clear and perfect method (the only one) to raise the money to pay for such purchases, is granted by sections four and twelve of that act, to wit: *Taxation* and upon the principles adopted in this Court in

Police Jury v. Britton, 15 Wall. 570.
The Mayor v. Ray, 19 Wall. 475.

That where power is given to perform a corporate act and an express power and method is given to raise the money therefor, the corporation is limited to the expressed method ; the county authorities are limited to the power of taxation to raise money to make such purchases, thus showing that the purchase embraced in the resolution is so connected with the matter of taxation that the restrictions contained in the acts of 1874 and 1876 can be said to operate upon it, for if the county authorities were not granted the power of taxation to raise the money to make such purchase and limited to such grant, it might well be said, the acts of 1874 and 1876 can not be invoked against this resolution.

I will now call the attention of the Court to the power of taxation granted to the county authorities, and the method pursued in connection therewith, together with the limitations thereon.

By section four of the act incorporating the county authorities, they are *required* at their annual or other meeting held for that purpose, to fix the amount to be raised by taxation for the current or fiscal year, This section was so far changed by section five of the act of 1874, as to limit the time for fixing the amount so to be raised to any meeting held prior to the 15th day of July in each year, and by section one of said act of 1874, the commencement of the fiscal year was changed to December 1st. Section twelve of the act incorporating Chosen Freeholders specifies the manner of collecting the taxes which have been appropriated under section four. The annual meeting as specified in section four above referred to is fixed in the act incorporating county authorities, by sections six and thirty-eight, to be the second Wednesday of each year.

Matter of Highway, 1 Harrison, N. J. 91.
State v. Halsted, 10 Vroom, 405.

Thus it will be seen that it is the duty, (and I may say, also the practise) of the county authorities under said act, each year to pass a resolution at some meeting held prior to the 15th day of July, fixing the amount to be raised by tax for the use of the county during the fiscal year, commencing on the first day of December next following.

By section five of the act of 1874, the county authorities are restricted in the amount to be expended by them during any fiscal year to the amount raised by tax for that year.

By the act of 1876, it is made a crime for Chosen Freeholders, to order or vote for the disbursement of public moneys in excess of appropriations, or to incur obligations in excess of their appropriations and limit of expenditure.

The gravemen of this case is the violation of the restrictions of the acts of 1874 and 1876.

The resolution was passed December 14, 1876; by its terms it prescribed that the payment for the lands should come out of the taxes to be raised for the fiscal year commencing December 1st, 1877, and it is not necessary for the determination of this case to show what, if any, appropriation was made for the year commencing December 1, 1876, because of the limitation in the resolution, that payment should be made out of the taxes to be raised for the following fiscal year, and for the same reason it is not for the complainants to show that there was *not* kept unexpended out of the appropriation for the year commencing December 1, 1876, and carried to the year commencing December 1, 1877, an amount sufficient to pay for the lands, if such is the fact, that such a part was kept unexpended for that purpose, that is for the defendants to show. The complainants stand on the case made by the resolution which they claim to be the facts.

The fifth section of the act of 1874 and the act of 1876 are restrictive of the powers of the county authorities, both to purchase on a credit not provided for by a resolution for a tax levy, or to purchase property or otherwise expend money to a greater amount in any year than the tax levy voted for the purposes of that year, in which the expenditure is made, and in that sense too which makes the resolution void as ultra vires. That section of the act of 1874 is remedial and must be liberally construed. The objection urged against the construction which was placed upon it by the Court below, seems to be upon the meaning of the word "expenditures," and it is sought to control its meaning mainly by limiting the use of the word "raised" in that section to mean such taxes as have been collected, it seems to me that such contention cannot be maintained; that word (raised) must be construed with reference to its meaning in sections four and twelve of the act incorporating county authorities, where it is used in connection with the amount voted to be levied by taxation.

The exception contained in that section of the act broadens the meaning of the word "expenditures," if any doubt about its meaning could have existed without the use of that exception.

Another view which it seems to me can be advanced why this act has more restrictive force than the other side are willing to credit to it, there is a general policy existing in the act incorporating county authorities, which I think may be termed an implied restriction, that before indebtedness

should be created, either the county should have the money or a resolution for a tax levy should exist from which the authorities would be enabled to meet the indebtedness created, or in other words, there should be created a fund from which payment could be made before indebtedness is created, and that fund could either be cash, or an appropriation, or both ; the contention on the other side is, that the restriction in the act of 1874 is only directory, i. e., declaratory of a policy to be pursued, we hold that that policy exists in the general act, and that the act of 1874 means something more.

It seems to me a question of some importance in this connection, as to how far courts will allow corporate authorities, with that class of powers and duties granted and imposed upon these county authorities by the general act, to go in direct violation of a policy declared in the grant of those powers and duties? If it is the privilege of those authorities to create indebtedness to a limited extent beyond the amount they vote to raise by tax as a basis, can they not violate their duty as regards the matter of taxation to a great extent, and buy as much as may be desired by them on credit, and thus create what was never anticipated by or within the powers conferred by the act, a debt? My solution of the question considered only as a general scheme upon which the act is drawn, and not as a positive restriction, although I think it is, upon the ground that no power to create indebtedness except as I have above stated was granted, is that these authorities are bound by the general act to have as a basis to create indebtedness, either a resolution for a tax levy, or money received from one, and that all indebtedness created without that basis is ultra vires, and subject to the rules regarding that class of contracts, which rules in their application are sufficient protection to all who deal with those authorities. It will undoubtedly be asked why this act of 1874 was passed if the restriction here contended for exists in the general act? I answer, not only to comprehend in express terms, what was implied in the general act, but also to curtail the power of creating lawful indebtedness in each fiscal year to the amount of the tax levy for the uses of that year, that is, if the whole of the tax levy for the use of the county during the year December 1, '76 to '77 should have become expended by the month of August, 1877, no power should exist for the county to use the tax levy just voted for the uses of the year December 1, '77, 78, as a basis to create indebtedness until December 1, 1877, which power would have existed under the general act, even upon the contention which I have here urged.

AS TO ACT OF 1876.

It is admitted on the other side that the general rule to be applied to statutes which inflict penalties is, that the penalty implies a prohibition. It is also admitted here that Courts will always ascertain whether the intention of the act was to punish the offender simply, or both punish the offender and prohibit the act, and in order to ascertain such intention will look at the language, the subject matter, the wrong or evil sought to be remedied or prevented, and the purpose of it. Upon those general principles the complainants stand with Mr. Crampton, and on them say the statute of 1876 was intended to prohibit the act as well as punish the offenders. The persons upon whom the act is intended to operate, occupy positions of trust; they can by reason of their positions do great injury to those whom they represent. A class of those injuries are named in the act. This resolution embraces two of the injuries specified in the act. It, within the meaning of the act, ordered the disbursement of public moneys in excess of the appropriation, &c., for the year 1876–77; it within the meaning of the act incurred an obligation in excess of the appropriation and limit of expenditure, &c., for the year 1876–77.

State v. Halsted, 10 Vroom, N. J. 402, affirmed on writ of error at November Term of the Court of Errors and Appeals of this State, and will appear in 12 Vroom, Speer ads. State, will appear in same volume; and let me draw the attention of the Court to the fact that the only counts upon which the indictment was maintainable against Speer were nolle prosd.—In excess of, &c., &c., 1876–7.

State v. Hudson County, 10 Vroom, 632.

In the latter case the question "Does this statute prohibit the act as well as punish the offonders?" was directly involved, and it was the opinion of the Court that it did. But aside from the opinion of that Court, take the case of Lester v. Howard Bank, 33d Md. 558, relied upon by the other side. The statute under which the bank was organized, provided that no director or other officer of the bank should borrow money from it under a penalty of fine and imprisonment. The bank made a loan to its president; the validity of this loan was at issue in the suit; the Court held the bank could recover, and correctly too, it seems to me, for it certainly could not have been the intention of the legislature by the same statute with which it intended to protect stockholders and depositors by punishing the offenders for perpetrating the act, to at the same time, and by the same statute, perpetrate an injury upon those it [redacted]

sought to protect. Suppose a statute authorizing county authorities to subscribe for bonds of any of the municipalities within it for the purposes of a sinking fund, which provided, that in case said authorities should subscribe for the bonds of any municipality, which should, at the time of such subscription be owing said authorities upon an overdue indebtedness, that those members voting to make such subscription should be liable to fine and imprisonment. It could not be held upon a suit brought by the authorities to recover upon the bonds issued in accordance with a subscription made after the municipality issuing them had made such default that the authorities could not recover, because the statute intended to prohibit the act, and for the same reason the Maryland statute did not intend to prohibit. Such acts as those are just the converse of this one; in those, to declare the thing done void, is to do injury to the ones the act is designed to protect; in this, to declare the act done void, is to protect the ones the statute was intended to protect. I think there is no reason, as far as this act is concerned, to disturb the general rule —that the penalty implies a prohibition.

AS TO REMEDY.

When the resolution was set aside by the Supreme Court of New Jersey, it became the *duty* of the county authorities to surrender the land and obtain the bonds either voluntarily or through the aid of a Court; neglect to do that amounts to a fraud upon the complainants.

1 Story's Equity Com. sec. 187.

Whenever the representative of a class of the people, such as land owners or taxpayers are about to allow a fraud to be perpetrated upon them (the people) they (the people) have the right to seek relief in equity.

Schuman v. Seymour, 9 C. E. Green, N. J. 143.

The above was a suit by an owner of land to restrain city authorities from paying contractor who was making improvements under municipal authority for which the land owner was liable to assessment.

Dillon on Municip. Corp. sec. 736.

Cooley on Taxation, p. 548.

Higbie v. Camden & A. R. R. Co., 4 C. E. Green, 276.

The distinction between the cases as to when the right vests in the taxpayer, and when in the name of the Attorney-General seems to be when the injury affects that class of the people as contradistinguished from the people at large.

The county authorities cannot, in the suit by Crampton, plead the ultra vires of the contract. The distinction in treating ultra vires contracts is between executory and executed contracts. While Courts maintain with vigor the limitations upon corporate acts while matters are still in fieri, yet they are equally inclined to enforce contracts though ultra vires when executed.

Green's Brices Ultra Vires, p. 372, note.

When contracts are executed and the corporation has received the benefit of it, an implied assumpsit arises against it, and for the purposes of justice it will be presumed that the authority exercised has been properly delegated, and that contracts without authority have been ratified.

Gas Co. v. San Francisco, 9 Cal. 453.
Argenti v. San Francisco, 16 Cal. 255.

It may be said upon the authority of the Police Jus. v. Britton, and Mayor v. Ray, that the county can defend at law. I admit, that if the suit were confined to an action on the bonds, that the county could defend at law, but the action being for the value of the land, I hold the rule laid down in Green's Brices Ultra Vires and the California cases must be the guide. The reason for estopping the county authorities in this case from pleading the ultra vires of the *executed* contract at law, i. e.—Justice, and also its latches precludes it from entering equity. If the county authorities can not plead the ultra vires of the contract at law, and cannot enter an equitable forum because as they appear justice can be done them at law, then I insist the way is clear for the taxpayers to come to a Court of Equity, and ask protection, unless laches or some other element can be invoked as an estoppel.

AS TO LACHES.

The taxpayer cannot move until some impending danger exists, and then only when the representative can not or does not protect his interest; and in this case it would not have been possible for these taxpapers to have commenced a suit against Mr. Crampton until they did; he is a resident of another district, and could not have been reached with the same process that would have reached the county authorities.

AS TO EXECUTED CONTRACT.

The complainants cannot be estopped simply because the contract was executed. The test is, can the parties be returned to their original positions.

It seems to be claimed upon the other side that section thirteen of the general act incorporating county authorities would authorize a tax levy to be made at a time different from the ordinary one, and that this resolution might so be considered. I take it whatever other view which might be asserted against such a contention, that the proviso contained in that section, requiring them to direct in writing the time and place of the meeting of the assessors, and the time for collecting the same not being complied with in this resolution, is a complete answer, because it is not thereby brought within the provision of that section.

I have no hesitation in saying that I do not consider the New Jersey adjudications upon either the act of 1876 or this resolution to be binding on this court in this cause.

I submit that this appeal should be dismissed.

PETER BENTLEY,
Of Counsel with Complainant below.

In Supreme Court of the United States.

No. 1070.

MAHLON B. CRAMPTON,
Appellant.

and

AUGUSTUS ZABRISKIE et als.,
Appellees.

On Appeal from U. S. Circuit Court

For the District of New Jersey.

BRIEF OF

J. H. LIPPINCOTT,
Counsel for the Board of Chosen Freeholders of the County of Hudson.

DAVISON & CO., Law Printers, 19 Montgomery Street, Jersey City.

U. S. Supreme Court.

No. 1070.

MAHLON B. CRAMPTON,
Appellant,
and
AUGUSTUS ZABRISKIE ET ALS., and THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, STATE OF NEW JERSEY,
Appellees.

On Appeal from Circuit Court of District of New Jersey.

On Bill, Answer and Stipulations of Facts.

BRIEF OF APPELLEE,

The Board of Chosen Freeholders of the County of Hudson.

The only addition or correction of the statements of facts, as contained in briefs of counsel for the appellee, are

1. The Board of Chosen Freeholders have never taken actual possession of the lands purchased under the resolutions.
2. The said board have never received any of the rents or profits of said lands, nor exercised any acts of ownership whatever over the said lands, nor assumed any control whatever over, or about the same.
3. That the lands remain in exactly the same condition in which they were at the time of the purchase.

See printed record. (Stipulation of facts), page 47.

By reason of certain assumptions in the briefs of counsel of appellee, it is proper to say here, that by referring to printed record, bill, answer and the *two* stipulations, it will be seen that they contain no allegations whatever, upon the following points :

1. Need or necessity of the purchase.
2. Fairness of the price of the lands.
3. The integrity of the purchase.
4. The possession and enjoyment by the County of Hudson, of the lands since the purchase, except such as are contained in the stipulation on page 47.
5. The condition of the funds in the treasury of the county, at the time of the purchase, or at any time since.

The discussion of the questions of law, involved in this case, ought to be free from any assumptions whatever upon these points, in either direction.

The bill of complaint charges generally, but distinctly, that both the resolutions of purchase, and the purchase, were illegal.

The bill further charges, that there was no power in the board to purchase said lands, at the time of the purchase; and that there was no power to issue the bonds, nor to pay for the purchase, in the manner directed by the resolutions of purchase, and that the purchase and bonds are *ultra vires* and void.

The answer of this defendant, the Board of Chosen Freeholders of the County of Hudson, admits that there existed no power in the Board to make the purchase, and issue the bonds, and that the purchase and bonds are *ultra vires* and void, and submits itself to the decree of the Court.

The answer of the appellee, Mr. Crampton, charges and insists, that the said board "had full power and authority "to pass said resolutions, to make said purchase, to issue "said bonds, and full power and authority to pay said "bonds or purchase money for said lands, and that it is "their duty so to do;"

And, "that the bonds are all legal and valid, also that "all the proceedings of said board, in reference to said "purchase and the consummation thereof, by delivering "the deed and bonds as aforesaid, are legal and valid, and "that this defendant is entitled to recover from said board, "the full amount of the bonds now held by him, and in-"terest thereon, and that there should be a like recovery "on the other bond held by Harrison;" and further charges in the answer that "said purchase was and is valid and "legal, and should be sustained by this Honorable Court."

It will be seen that these allegations, of bill, answer and stipulations, are clear and distinct, upon the questions of the power, or want of power to purchase, and are entirely free from any entangling alliances with facts as to the questions of necessity, fairness of price, &c., and no assumptions of such facts can be had in the argument of this case.

It seemed necessary to say so much in addition to the statements made in the briefs of the appellee, as in certain parts of them, statements of facts are incidentally made, which might be taken for granted, but which have no existence whatever in the case.

The issue intended to be made, and which has been made, by the pleadings in this cause, and the stipulations therein, is the naked one, whether the board had the power to make this purchase at all, at the time, and in the manner, it was accomplished, and whether the appellee has the right to recover either upon the bonds, or to recover the consideration of the purchase as expressed in the resolutions of the Board of Chosen Freeholders of the County of Hudson.

The deed was executed and delivered in accordance with the resolution. Then all proceedings stopped, and have remained in *statu quo* ever since. There was no actual possession of the lands taken by the board. No action has ever since been taken by the board, except it has been to defend the suits brought against the corporation in relation to the matter. The certiorari into the Supreme Court of the State of New Jersey, and the express *supersedeas*, stayed all further proceedings by the board, which made the purchase, and the members of the subsequent boards have neglected to take any steps towards interference in the matter and the lands, remain in the exact condition they were in on the fourteenth day of December, 1876.

The questions arising in this case, will be discussed under the following heads :

1. The complainants have the rights as taxpayers of the County of Hudson to maintain this suit.

2. That independent of the statutes of 1874 and 1876, the purchase was *ultra vires*, because no power was vested in Board of Chosen Freeholders under the law to purchase a new site for a court house and other public buildings, that power having been

theretofore exhausted by the Board of Chosen Freeholders of the County of Hudson.

3. That the statutes of 1874 and 1876 were prohibitions of the purchase, they constituted inhibitions of and limitations upon the power of purchase, in the form, mode and manner in which it was exercised.

4. That this case present no such circumstances as can give rise to any distinction between a contract executory and a contract executed, so as to make any different principles applicable to this case. That the doctrine of *ultra vires* applies to this purchase to its fullest extent, as not within the power of this board, and the county not having received any benefit from the purchase, and it being possible to do justice and place the parties, in the same positions they were at the time the purchase was made and the deed delivered. That the doctrine of *ultra vires* executed contracts, as applied to private corporations, and in a certain class of cases in which municipal corporations are involved, are not applicable to this case, and that this case can be determined in favor of the taxpayers without injury to any one, and by decree of this Court, justice done in this suit to all parties.

I.

On the right of the taxpayers to maintain this suit.

The right of the complainants to maintain this suit cannot at this time be questioned. The Board of Chosen Freeholders of the County of Hudson have filed their answer in the cause, and by it submit themselves to the decree to be made by the Court, signifying their willingness to have the Court make decree as prayed for in complainants' bill.

It is not for the appellant Crampton to say that the bill should have been filed by the Board of Chosen Freeholders as complainants, because, in this very cause, by an affirmative answer, it submits itself to the decree of the Court, without pressing such objection; and it being a cause, wherein by the pleadings and stipulations, the cause can be determined upon its merits.

I do not know that this question is to be raised. It was raised below, and is referred to and decided in the opinion of Justice Nixon, in this case.

The very object of the suit is to test the question of the legality of the action of the Board of Chosen Freeholders of the County of Hudson, in making this purchase, and the only party who can object to the right of the complainants to ask the relief, is the corporation whose acts are sought to be avoided, and if the corporation itself submits to the exercise of jurisdiction, that fact ends the discussion upon the subject, because entire justice can be accomplished by the suit, and the rights of all parties determined by it upon the merits.

Miller v. McKenzie, 2 Stewart, 295.

The Court below held that the complainants had the right to maintain their bill.

The whole subject is discussed in Dillon on Municipal Corporations, chapter 22, § 727–738, and in cases cited in the notes thereto, and the conclusion there reached that, "it is the prevailing doctrine that in this country the right "of the property owner or taxable inhabitant to resort to "equity to restrain municipal corporations and their offi- "cers from transcending their legal duties in any mode which "which will injuriously affect the taxpayers."

"It can be vindicated upon principles, in view of the "nature of the powers exercised by municipal corporations, "and the necessity of affording easy, direct, and adequate

" preventive relief, against their abuse. It is better that " those immediately affected by corporate abuses should " be armed with the power to interfere directly in their own " names, than to compel them to rely upon a distant State " officer."

" There can be no doubt that the corporations may in its " own name, bring suits in proper cases, to be relieved " against illegal or fraudulent acts upon the part of its " officers."

" Now, in this case, the corporation itself has filed its " answer—has made its appearance in Court; submitted " to its jurisdiction without exception or objection, and all " the parties are in Court, and by pleadings and stipula- " tions every fact is set forth, requisite to determine the " rights of the parties."

The facts in this case show that the act here complained of, will necessarily result in fastening upon the taxpayers of the County of Hudson the additional burden of $225,720, and if the act of purchase complained of is *ultra vires*, then the principle is clearly established that the taxpayers of the County of Hudson may resort to equity, and that the jurisdiction will be entertained in that suit against the corporations and their officers, when they are acting *ultra vires* or exceeding powers not conferred upon them by law, and such acts exercised affect unpromiscuously the taxable inhabitants.

Dillon Municipal Corporations, § 736.

If the Court should not uphold the right of the taxpayers to maintain this suit, it would perhaps, result in an entire failure of remedy to them, and if the contract be *ultra vires* within the contemplation of the principle of law which renders *ultra vires* contracts void, then it is the duty of Mr. Crampton to deliver up these bonds, and surrender them for cancellation. And it is also the duty of the Board of Chosen Freeholders to reconvey. There is one fact apparent—these things have not been done—their accomplishment is not in contemplation—and when this is alleged the result is, that there is nothing existing to-day, (but the injunction in this suit), to prevent this defendant from taking a different position from which it assumes in this cause or is expressed in the answer.

If this bill be dismissed, the board if they desired, could make entire default in the action to recover the amount of the bonds or purchase money.

The recovery in the suit at law, is sought against the defendant alone. No other power has control over it. They are not bound to defend. They may neglect the defence, and allow judgment to pass against them.

The Board of Chosen Freeholders changes its entire membership once every year. The board in 1876 made the purchase, and issued the bonds—the board in 1877 ordered the suit on the bonds to be defended. The board of 1880 may direct and order the defence to be withdrawn, or if the bill of complaint in this cause be dismissed, the members of this board at any time may refuse to proceed in the name of the corporation to take any similar proceedings, or to defend the suit at law, although the contract be *ultra vires* and void.

Thus the danger fully exists which invokes the suit by the complainants as taxpayers and taxable inhabitants.

Whenever the representatives of the people constituting a municipal corporation fail to take measures to relieve the taxpayers of a fraud, or an illegal contract, the taxpayer has a right to such relief in equity.

Dillon, as above cited.
Schumn vs. Seymour, 9 C. E. Green, 143.

Their duty is violated if they stand by. They are bound to take proceedings, and if they do not the taxpayer has the right to seek relief in equity.

Dusenbury vs. Newark, 10 C. E. Green, 295.
Cooley on Taxation, page 545.
Higbee & Riggs vs. Camden & Amboy R. R. Co. 4 C. E. Green, 276.
2 Wood's C. C. 108, 16 California, 255.

Also questions arise here as to the power of the corporation, the Board of Chosen Freeholders, to plead the *ultra vires* of the contract at law.

If this be a principle of law, that the board are not enabled in the action on the law side of the Court to plead the *ultra vires*, then it is absolutely necessary, in order to avoid the fraud and danger to the taxpayer, that he should be allowed to maintain his suit in equity, in order that justice may be meted out.

Green's Brices, Ultra Vires, page 274.
Gaslight Co. vs. San Francisco, 7 Cal. 453.

This is claimed by the appellant to be an executed contract, and that as to an executed contract, a municipal corporation cannot plead the *ultra vires* of the contract.

Green Brices, page 272 and notes.

If this clause be true, then the necessity for the intervention of the taxpayer is so much the greater.

Manne Insurance Co. vs. Hogan, 7 Cranch. 336.
Doughty vs. Doughty, 5 Howard, 192.
American Law Register, page 191.
Southern Law Review, June, July, 1878, page 324.
14 New York, 536, 16 Wallace, 678.
Cooley on Taxation, 548, 18 Howard, 331.

The Court below determined that the suit was maintainable by the taxpayers in accordance with these principles, and we submit that the jurisdiction of the case at the suit of the taxpayers in this form, is not legal but necessary.

II.

Independent of the statutes of 1874 and 1876, there was no power in the Board of Chosen Freeholders of the County of Hudson, to purchase a new court house site, as the laws of New Jersey existed at the time of this purchase, because the Board of Chosen Freeholders had for a long time previously purchased a site for a court house, and had erected county buildings on the same, and thereby had exhausted all the power conferred upon them in that particular, and no purchase of a new site could be made without further legislative aid; and that therefore, the purchase, resolutions of purchase, bonds, and all other proceedings relating thereto, were *ultra vires* and void, upon this ground alone.

Laws of New Jersey, 1786, pages 243, &c.
Laws of New Jersey, 1798, " 270.
Laws of New Jersey, 1804, " 351.
Laws of New Jersey, 1817, " 24.
Laws of New Jersey, 1799, " 563.
Laws of New Jersey, 1820, " 88.
Laws of New Jersey, 1831, " 57.
Bloomfield vs. Laws of New Jersey, page 125.

By a general act of the Legislature of the State of New Jersey, passed February 13th, 1798, to be found in Paterson's Laws of New Jersey, pages 265, &c., the Chosen Freeholders of the several townships, precincts, wards, in the respective counties of New Jersey, and their successors, were constituted bodies politic and corporate, by the following names, that is to say:

"The Board of Chosen Freeholders of the County of Bergen," and then follows the names of thirteen counties.

At the time of the passage of this act, the County of Hudson was not created.

The statutes as compiled and collected in Paterson's Laws, and are to be found upon our statute books of New Jersey to-day, in the same shape, and precisely the same so far as the power to acquire lands for the use of county is concerned.

Revision of Laws of New Jersey of 1871; published in 1877—title, "Chosen Freeholders."

The second and fourth sections of the act as contained in the revision of 1877, the second relating to the power of the board to purchase lands, and the fourth relating to the power and method of raising moneys by taxation, annually, are precisely in the same words.

By act of the Legislature of New Jersey entitled "An "act to create the County of Hudson."

Laws 1840, pages 65, &c.

The County of Hudson was created and erected out of the County of Bergen.

By the second section of the act it is provided, "That "the said County of Hudson shall have and enjoy all the "jurisdiction, powers, rights, privileges, liabilities, liberties "and immunities which any other county of this State doth "or may enjoy, and that the said County of Hudson shall "elect, in the same manner as other counties in this State "do, one member to represent said county in the General "Assembly and one member to represent said county in "the Legislative Council of this State, and no more until "regulated by law."

By the eighth section of the act it is provided, "That "the Chosen Freeholders of the said townships of Bergen, "of Harrison, and of Jersey City, and their successors, "shall be, and they are hereby constituted a body politic "and corporate in law, and they shall be styled and known

" by the name of the Board of Chosen Freeholders of the " County of Hudson, and shall have, hold, use, exercise " and enjoy the like rights, power and authority, and be " subject to all the provisions of the laws for the time being, " as the Board of Chosen Freeholders of the other counties " of this State, are or shall be entitled or subject to, and " that said Board of Chosen Freeholders shall meet at the " house now occupied by Henry Drayton, called Buckhorn " Hotel, in Bergen township, on the day appointed by law " for the next annual meeting of all Boards of Chosen " Freeholders, in other counties of this State, and after- " wards at such times and places as they may appoint or " shall be required by law, until a court house shall be " provided for said County of Hudson."

Had these provisions of the act of 1840 stood alone, it might well be said, that the general power was vested in the board to purchase a site for a court house, and also at the present time, under the general law cited by counsel for appellant, to purchase a new site, but this board as organized under this special statute of 1840, were vested with no absolute power to purchase originally under the general statutes, and did not pretend to exercise any such power.

By the 13th section of the act of 1840 it was provided, " That an election to determine in which township or city in " the said County of Hudson, the seat of justice shall be, " and in which the court house and other public buildings " shall be located, shall be held at the places hereinbefore " appointed," &c. ; and then goes on in this and the succeeding sections to provide the time and manner of holding the election, the qualifications of the voters thereat, the manner of canvassing the votes, the filing of the returns with the Clerk of the Court of Common Pleas ; and in the seventeenth section concludes as follows :

" And the said clerk shall faithfully count the said votes, " in a public manner, and the township or city designated " by a plurality of the said votes shall be the township or " city, in which the seat of justice for said county shall be " located ; and it shall be the duty of the clerk of said " county to transmit a certificate under his hand and seal " of the township so chosen as the seat of justice, to the " Board of Chosen Freeholders of said county, at their next " meeting, which certificate shall be entered in words at " length on the minutes of said board, who shall thereupon " select and determine the particular site or sites in said " township or city, where the court house, jail, and other " public building shall be located."

By section 19 it is provided, "That the Board of Chosen "Freeholders of said county, shall upon a call of their "director, or upon their own adjournment from time to "time, as often as occasion may require, meet together at "such place as they may appoint for that purpose, and "said board or a majority thereof are hereby authorized in "the corporate name of said board, to contract for and "take a deed or deeds for lands, on which to erect the "court house, jail, clerk's and surrogate's office, and other "public buildings, and to erect said buildings, or to pur- "chase or otherwise procure, and provide for the same; "and also to order money to be raised by tax to be assess- "ed on the inhabitants of said county, or by loan, for the "purpose of defraying the cost of purchasing said land "and of building, purchasing or otherwise procuring and "providing said public buildings."

Under this special act the County of Hudson was created, and under this special act and not under the general law was the Board of Chosen Freeholders of the County of Hudson, organized and incorporated; under this act the power to select a "particular" site or sites for a court house, jail and other public buildings, was exercised, thoroughly exercised, and the contention here is entirely exhausted, if ever a power could be exhausted.

The board was forbidden in terms by this act to exercise its power to purchase land for a court house and other public buildings, under the general law; by this special act a particular mode was pointed out for the board to follow. It must be followed. None other could be, and can it be argued here, that having followed the mode pointed out by the statute to the end, that the board then could resort to the general law and select another site, and make another purchase for the same purposes without legislative aid or interference.

The special act took precedence of the general laws; it repealed the mode pointed out by the general act, and substituted in its stead another and different mode, which the board was bound to follow, in exercising power over the particular subject matter, and having once exercised the power provided for its exercise in the manner pointed out, the power became exhausted, and not subject to be again invoked for the same purpose.

The county of Hudson has always been a creature of special legislative aid and interference.

No less than twenty-five special acts of the Legislature of the State of New Jersey have been passed since 1840,

relative to the powers, rights and duties of the Board of Chosen Freeholders of the County of Hudson.

The references to them are collected in

Hood's Index of Laws of N. J. pp. 430–436.

By reference to them it will be seen that the government of the County of Hudson has been different from that in any other county in the State.

In other counties of the State, Chosen Freeholders are elected, one from each ward, town, or township, and the body so constituted elects one of their own number a Director, whose duty it is to preside at its meetings, but otherwise has no more power than a member, except to orders for money on the treasury, which have been ordered paid by the board.

In the County of Hudson, under its special form of government, authorized by special acts of the Legislature of the State of New Jersey, the board consisted and now consists two members from each Assembly District, and also a Director at Large, elected by the voters of the whole county, who has special powers conferred upon him of appointing all committees of the board, approving or disapproving of all appointments made by the board, of approving or disapproving of any action or resolution of the board, and if he disapproves, such disapproval can only be over-ridden by a two-third vote of all the members of the board.

The special law under which this board was created, and under which they exercised the power to select and purchase a court house site, was the only statute under which they could exercise such power, and the exercise of such power having been restricted to one instance and to one particular place, the exercise of the power, in that one instance, in the method pointed out by the statute ends the power and exhausts it; and the same power cannot be exercised, and its exercise repealed under a general statute, unless such general law is subsequent to the special law, and by particular reference repeals the special law and substitutes in its place the general law.

The general law, in this particular, is not applicable to the Board of Chosen Freeholders of the County of Hudson. The special act is subsequent to the general act, and under that special act the power was exercised and exhausted, so far as the particular subject matter is concerned.

The law of 1798 has been subject to revision; notably in 1820, 1846 and 1871.

See revisions of those years, title "Chosen Freeholders;" but it continues in force not as a new enactment, but as the old statute.

Sedgwick Construction, &c., page 229 and note "Revision."

This the rule as to Paterson's Revision.

Murphy's case, 3 Zabriskie, N. J. 180, 194.
State vs. Kingsland, 3 Zabriskie, 85–88.
Clement vs. Kaiglin, 2 McCarter, 47.

The same rule applies to the revisions of 1820 and 1846.

State vs. Hale, 1 Dutcher, 324, 326, 338.
Ruckman vs. Ransom, 6 Vroom, 565, 567.

A special act relating to the same subject matter, as a general law, and inconsistent therewith, repeals the general statute.

McGavisk vs. State and Erie R. R. Co. 5 Vroom, 509.
State, Taintor vs. Morristown, 4 Vroom, 57–61.

A general law applicable to the whole State, will not modify or repeal in whole or part, a special act, unless by express words, or necessary implication.

5 Vroom, 177–180.

Courts adopt a strict rather than a liberal construction of the powers granted by the Legislature to a municipal corporation, and they are limited to these grants, and cannot extend beyond them.

Dillon's Municipal Corporation, § 55 and cases cited.

Counties are of themselves but quasi corporations.

Hamilton vs. Nighels, 7 Ohio St. Reports, 109.

They are created almost exclusively with a view to the policy of the State at large for the purposes of political organization, and civil administration, in matters of finance, education, of provision for the poor, of military organization, of the means of transport and travel, and especially for the administration of justice, and are invested with few functions characteristic of corporate existence.

Our contention is here that this purchase was *ultra vires*, because the power had been theretofore exhausted, and of course could not again be exercised.

If upon the pretense of necessity these county officers

could at pleasure remove the site of court houses and other public buildings, it would result in the utter ruin of the taxpayers, and usurp the fundamental policy of the State.

There was no power in this case; it had been exhausted and the purchase was *ultra vires* for that reason.

III.

The statutes of 1874 and 1876 are prohibitory of expenditures, or the incurring of obligations, in excess of existing appropriations, and all obligations, whether in the form of bonds issued by the Board of Chosen Freeholders, or otherwise, in excess of appropriations, or made without appropriations having been therefore made, are *ultra vires* and void, and create no rights whatever between the parties, to which a remedy can applied.

We contend in this case that even without the statutes of 1874 and 1876, the Board of Chosen Freeholders of the County of Hudson had no power to make this purchase, in the form in which it was made, that it was *ultra vires* even under the act incorporating the Board of Chosen Freeholders—contrary to public policy, and the policy of the State; that every expenditure made, or every obligation incurred, should be based upon a tax levy, and not upon a credit outside of a tax levy, and even beyond it, unless express power be given in the grant of franchises to make just such expenditures and incur just such obligations. By the fourth section of the "act incorporating "the Board of Chosen Freeholders of the respective coun- "ties of this State," the whole policy of the law is developed, a policy too often departed from, and which departure has led to such extravagant expenditures as has resulted in the entire insolvency of so many municipal corporations.

But if it be contended that this purchase is within the scope of the general powers of this board, and not *ultra vires* in the form in which it is made under the general act, then the reply is that the statutes of 1874 and 1876, are express limitations upon the power of the board to contract in excess of the appropriation and tax levy, and renders this purchase *ultra vires*.

It must be remembered, right here, that the resolutions of purchase were not based upon credit, nor was the purchase made upon credit, in the ordinary meaning of that term. If there had been only the purchase, the considera-

tion remaining unpaid, and an ordinary evidence of indebtedness given, it might perhaps be claimed that it was a sale upon credit, and the tax levy or the appropriation not exceeded either by way of obligation or expenditure, but it is clear that the fiscal year commenced December 1, 1876, and ended December 1, 1877; previous to the time and before July 16, 1875, the appropriation for the fiscal year of December 1, 1876, to December 1, 1877, had been fixed.

The express terms of the resolution are, that the land be purchased, and the deed taken, "and that in payment for "said lands, there be issued to said Crampton a bond or "bonds of the County of Hudson, payable out of the "amount appropriated and limited for the expense of the "next fiscal year, said bonds to run one year from the date "thereof, and bearing interest at the rate of seven per cent. "per annum."

The resolutions were passed December 14th, 1876, and therefore the purchase money or the bonds must be paid out of the appropriations for the year December 1, 1877, to December 1, 1878, a fiscal year for which no appropriation could be possibly made for a long time subsequent to the purchase, and certainly not till after the first Wednesday of May following, after a new board came into power, as the board which made the purchase had exhausted their power of making any appropriation on or before the fifteenth day of July previous to the time of the purchase.

It is conceded by counsel of the appellant that full provision is made by the fourth section of the general law, for raising money annually by taxation, for all the purposes of the county. It must be conceded that it is the policy of law, that all expenditures of the county should be met in that way, and should be based upon the levies previously made, or in so many words upon money in the treasury, or taxes already levied and payable into the treasury.

The policy of the law is, and always has been, to make expenditures and incur obligations depend upon the money in the treasury.

The Constitution of the State of New Jersey, article 4, section 6, distinctly provides the manner of making State appropriations and expenditures, and enacts, that no money shall be expended without an appropriation made by law; that the credit of the State shall not be directly or indirectly loaned in any case, and in the appropriations made, the work or object shall be distinctly specified.

Here, in this case, an obligation is incurred, not upon credit ordinarily, but made not only previous to an appropriation, but made in express terms, without, and independent of any appropriation whatever, clearly by its own terms, beyond any amount of money in the treasury, or to be raised by taxation, and clearly in excess of any amount "ordered" to be raised by tax, and of any appropriation whatever in existence.

The object of tax levies is defiantly disregarded. The statute is ignored by the terms of the resolution.

The fault is not so much that the purchase was made upon credit (although that power is here denied), and also not that the bonds are made payable in one year (although the power to issue any bonds for the purchase of land is denied) from the date thereof, and in a year, for which there was no appropriation, but that the purchase itself was made upon basis that the purchase money, i. e. the bonds, were to be paid out of the appropriation of a year for which no appropriation was or could have been, at the time, made.

The length of credit, perhaps, is not the serious defect, but the very terms of the contract or resolutions expresses a credit contrary to the law, and create not only a credit but a burden of payment, out of the appropriations of a future year, for which no appropriation had been made.

It may be possible that the Supreme Court of New Jersey, Seidler vs. Board, &c., 10 Vroom, 632, &c., could not by its decision affect Mr. Crampton, it may be the legality of the bonds was not an issue in that case, and was not considered, but on page 637 of that opinion, the Court distinctly say: "But it is urged that even if this portion of "these resolutions is unlawful, that it does not illegalize "the whole—that provisions for purchasing the property "may still stand. * * * But the illegal direc- "tions now before us is not distinct from the rest of these "resolves; it is inseparably connected therewith, the "whole being intended to form an entire contract, so that "without it the terms would constitute a bargain, to which "neither party has indicated assent. It cannot be known "that the board would have consented to buy, or that the "vendor would have consented to sell, the lands described "for any other consideration than payment by these bonds. "The present case rather comes within the rule that if an "essential part of a by-law or resolution be bad, the whole "is bad—that where what is vicious is necessary for the "completness of that which otherwise might be lawful, all "is tainted and must be annulled."

Justice Dixon declares, speaking of the bonds, that "They declare also, that they are executed and issued in "pursuance of the resolutions now before us, and therefor, "every one into whose hands they have or may come is "chargeable with the legal character of their authoriza- "tion."

And speaking of the argument which had been advanced and urged before the Court, that the deed had been delivered, and the contract executed and passed to Crampton, he says, "Under these circumstances I do not think that "the mere exchange of papers should bar the jurisdiction "of the Court in a function exclusively its own, and *most* "*important to society*. It may be, that in adjudging these "resolutions illegal, we are declaring principles which, "when applied to the vendor's bonds, will show them to be "invalid, and it may be that if his bonds are valueless, and "that his lands ought to be restored, and only a Court of "Equity can decree their restoration." And in speaking of the votes of the members of the board he says, "And "not only were the votes forbidden, but it is equally evi- "dent that the resolutions wrought the accomplishment of "an end, which the statute was designed to prohibit, and "no other."

The effect of setting aside the resolutions, would be to annul the bonds; the bonds refer to the resolutions; such reference is incorporated in the bonds; the resolutions are made by such reference as much a part of these bonds, as if they were therein set forth at length; these bonds are not such in the general meaning of the word "bonds," they are but certificates which show the consideration of the transaction.

No recovery would be allowed upon such bonds as against the corporation, without the production and proof of the resolutions. They could not be proved as against the county, as a money bond is against an individual. The resolutions are the basis of the whole transaction, and without them the whole purchase would fall to the ground.

It was the resolutions which Crompton accepted. How could the bonds ever have been issued without the resolution. It is a novel doctrine, that the officers of the municipality, the county, could bind the county, without an assent of the corporation itself to the execution and delivery of large obligations of this character. By virtue of what authority, but that conferred by the resolutions, did the seal of the county become affixed to these bonds. By virtue of what authority did the Director, Clerk and County

Collector sign and delivery of these bonds, but by the authority of the resolutions. The deed could not have been executed or delivered without the resolutions; declare by legal adjudication that these resolutions are *ultra vires*, and the deed and bonds are as if they never existed.

The officers of the corporation cannot execute a deed or bond, or do or perform any other act, without a vote or resolution of the board, at a proper meeting, and the vote or resolution never becomes "*functus officio*." It is as immortal as the corporation is.

The Board of Chosen Freeholders is a "legal person," but not in the sense of physical action, but far more under the restrictive policy than ordinary municipal corporations.

Now, the Supreme Court of New Jersey (Seidler vs. Board, 10 Vroom, 632,) have declared the resolutions illegal, *ultra vires*, and void. If the Court had stopped at this point, this principle laid down by the Court, if sustained, renders the deed and bond nullities, except so far as they may be used to place the parties in the same positions they were before the purchase was made.

But in declaring the resolutions illegal, the Court declare the principles fully that these statutes are prohibitory of, are limitations upon the power of the board as exercised in this purchase; that these acts forbid it in the form and mode in which it was consummated.

If the reason of counsel for the appellee be correct, that as "there is no appropriation or limit of expenditure except for one year," that the Board of Chosen Freeholders can notwithstanding the statute of 1874, which provides that "the expenditures for any fiscal year shall not exceed the amount raised by tax," can incur obligations which is but another word for expenditures, to any sum whatever, in the exercise of their general powers, and expressly burden the fiscal years of the distant future with their payment, then may the annual tax levies be entirely disregarded, and the whole policy of the law, that before an obligation is made or incurred, or an expenditure made, there shall be an appropriation as a basis, can be wiped out. The policy of these statutes is different. The doctrine of the law is, and should be opposed to this violent assumption. Under such a principle taxation might become confiscation, and the only limit to the expenditures of municipal government would be the exhaustion of the taxpayer, or the death of the corruptionist.

Nearly all municipal work is done upon credit—a credit of a certain kind—but that municipal or public corporations have the power to borrow money and issue bonds, in the exercise of their general powers, is a principle which has never yet been established.

They must be expressly authorized to borrow and issue bonds, and a reference to the statutes of the State of New Jersey as collected in Hood's Index, under the head of "Hudson County," will show, that the power has never been attempted to be exercised without the aid of the Legislature, by express enactments, enacted for that very purpose from time to time.

In the absence of a specific grant of power, municipal corporations do not in general possess the capacity to borrow money.

Hackettstown ads. Schwackhamer, 8 Vroom, 191.
Dillon on Municipal Corporations, § 81.

The law is that the appropriation must precede the expenditure, and then credit can, perhaps, be given upon that appropriation; but to undertake to base a credit upon an appropriation to be made, is an excess of existing appropriations, and illegal.

State vs. Halsted, 10 Vroom, 402–408.

The board has no power to make an appropriation for the year commencing December 1, 1877. That was the duty of their successors. There was no appropriation, nor could one be made. The members of the board which made the purchase, had no power at that time or subsequently, to make an appropriation to pay for the purchase. The next appropriation would, of necessity, be made by their successors, after they came into office, between the second Wednesday of May, (or as changed by statute of 1875,) after the first Tuesday after the first Monday in May, and before July 15.

State vs. Halsted, 10 Vroom, 407.

In brief of counsel for appellant, the case of Weston vs. Syracuse, 17 Hill, N. Y. 110, is cited in support of the doctrine an expenditure be made upon credit. The Supreme Court of New Jersey say, in relation to that case, that in that case, the prohibition was against contracting debts after a certain date. The alleged offense consisted of entering into a contract for work to be performed during the next year. This was held not to be a debt, but only an obligation, and therefore not within the statute.

The statute of 1874 expressly limits the expenditure, and as we claim, the incurring of obligations in excess of tax levy (or appropriation), and the statute of 1876 limits both to within the existing appropriation, and these statutes differ entirely from the New York statute in requiring the appropriation to precede the expenditure or obligation.

State vs. Halsted, 10 Vroom, 408.

If this doctrine be correct, that the statutes of 1874 and 1876, are limitations upon the general powers of the board, it was not within the power of the board which came into office on the second Wednesday of May, to make an appropriation for the payment of these bonds or the purchase money during the fiscal year from December 1, 1877, to December 1, 1878.

Neither these bonds, nor the purchase money, could be paid out of funds or money raised by taxes for the fiscal year December 1, 1877, to December 1, 1878. The counsel asks, "is it true that eighteen days after the fiscal year "beginning December 1, 1877, commenced, there was not "money in the treasury to meet these bonds, no such es-"sential fact is either alleged or proven, or argued."

It certainly is argued, this case is certainly free from such fact—there certainly was not money in the treasury to meet these bonds when they became due. The claim is that the board and Mr. Crampton, acting together, made a contract in violation of the limitations of the statute of 1874 and 1876, that no appropriation was or could be made to pay the consideration of this illegal contract, that the Courts of New Jersey, after the indictment of the individual members of the board, for this purchase, stayed the board from any action in the matter, such stay or supersedeas as is found in the record, was granted before any appropriation could be made for that fiscal year; a supersedeas which is yet in force and which cannot be disobeyed without contempt of court; so that it does appear as an affirmative fact in this case, that no appropriation was made, and it would be very difficult to ascertain how the money to meet these bonds could get into the treasury, unless it be that the members of a municipal corporation under the plea of "scope of power," can do anything that an individual can, and by his action bind the corporation, even if the prison doors do foreclose his physical existence.

Another answer to this argument is, that it is the duty of the appellee to show that his certificates of indebtedness, or that his sale to the county is legal; that there are funds or taxes legally raised, and in the treasury to pay him; to show this affirmatively by his answer.

And, again: by his answer he makes no issue of this character—did not intend to do it—he intended to stand upon the legalities of the transaction independent of any such question of fact, for if there were facts of this character material for him to allege, he would allege them; his failure to allege such facts conclusively show that no such facts were in existence.

And, again: the statutes of 1874 and 1876 apply to this contract, made it *ultra vires*, and no act which the board might do, could apply to the contract and make it legal.

There is no doctrine of law which permits of the ratification of an *ultra vires* contract.

Dillon Municipal Corporations, sec. 385.

It was not within the power of any subsequent board to make an appropriation to pay the consideration of an *ultra vires* contract, one which had been so declared by the courts.

The argument is also offered, that the board might have made during the fiscal year 1876–1877, a special levy of taxes to pay the bonds. Since the act of 1874, no special levy of taxes can be made except in cases of epidemic.

The levy fixed is the limit of expenditure.

State vs. Halsted, 10 Vroom, 410.

Counsel for the appellant urges strongly that the statute of 1876 expends its whole force in the criminal liability fastened upon the individuals composing the board who vote to make the expenditure, or incur the obligation, and in substances urges: "If no obligation, then no crime." That because by that statute the incurring of an obligation in excess of appropriation or limit of expenditure was a misdeamor, it must follow that legal obligations were incurred.

Decision in Seidler v. Board, 10 Vroom, 632, disposes of this doctrine, and declares that the statute was designed to "prohibit" and limit the act, and was intended by the Legislature as an inhibition of the power, and not a direction merely, which, if disregarded, expended its force upon the individual criminally.

And this construction must be correct. The statute was enacted to cure a mischief which had resulted in the bankruptcy of many municipal corporations of New Jersey. The excess of appropriations was the fashion; it was exercised upon the slightest pretense. Municipal extravagance not only took upon itself all the colors of the rainbow, it had become chameleon-like in its changes. Fourth of July

feasts, banquets upon public meeting days, junketting tours, lobbying expenses, and all the other varied and diverse pleas which extravagance can assume, had become as common as the exercise of the actual powers conferred upon them. The act was intended as a radical cure of this mischief. It was for the protection of society and the public, and to give it the construction urged by counsel for the appellee would be to render it entirely useless upon the statute books, to effect the main objects of its enactment.

If the members of the board, (under such an argument), was willing to suffer the risk of the penalty, being imprisoned, then the force and power of the statute is exhausted, and society finds its relief in the fact of the punishment of the offender, and its opening its purse to pay for the extravagance of an act which the law has forbidden.

The construction contended for by counsel of appellant, ought not to be upheld to the destruction of the vital interest of the public.

In brief of counsel for appellant, it is urged that these bonds or the consideration could have been paid out of an appropriation made for the year from December 1, 1876, to December 1, 1877, and out of taxes of that year carried over to the year 1877, 1878. This is but an assumption of counsel, which can have no foundation in fact—does not have in this case. To assume here, that the Board of Chosen Freeholders of the County of Hudson on or before July 15, 1876, appropriated the sum of two hundred and forty-one thousand five hundred and twenty-one dollars, (which would be the amount of bonds and interest to December 18, 1877), more than was sufficient for the ordinary expenses of the county, is quite a stretch of assumption.

Now, in the first place, this fact does not appear in the case. If it was to appear in the case the appellant should have put it in for his own protection. The fact alone that he did not is sufficient for the assertion that it is not a fact.

It could not be a fact; the appropriations are fixed before July 15th. The purchase is not made till December 14. The appropriation was made for other expenses of the county, not for this expense.

If there were sufficient moneys carried over, they could not be used for this payment, they were reserved for past due obligations of the county, based on that and former appropriations.

Besides in determining the *ultra vires* of this contract and other questions arising thereon, these parties, the appellant and the board, must be held to their contract of purchase, that this payment must be made out of the ap-

propriation for the year December 1, 1877, to December 1, 1878.

Suppose for illustration, Hudson County by virtue of special statutory authority have issued bonds upon transactions within the limit of their authority, due in five years from date—in ten years from date—in twenty years from date, can they pay them *now* out of any funds in treasury arising from taxation—they could not do it, without statutory authority, even with the assent of the bondholders; it would be a clear misappropriation of the funds of the county. It would be a fraud upon the taxpayers; it would be an *ultra vires* act, which the taxpayer would have the power to interfere and stop.

Suppose under the general powers of the board, they had the right to issue bonds for certain purposes, for five, ten and twenty years, and they had so issued them, could it be said that out of the funds *now* in their hands arising from appropriations of former years. It is useless to argue a question of this character; their want of power to do it is apparent.

Suppose this purchase was a legal transaction; could the bonds be paid out of moneys arising from former years' appropriations? Appropriations are limited to expenses. Appropriations are made for one year, to pay the expenditures or obligations incurred and due in that year. Admit any other argument and the barriers erected for the protection of the taxpayers are broken down and destroyed; and there can can be no limit placed upon extravagance and corruption.

This purchase was an excess of the appropriations of the year 1876 and 1877, and therefore could not be paid from it. Its terms, the terms of the contract, states that the parties are bound by that.

The indictments of the State vs. Halsted and against Speer, two members of the board, were founded upon two classes of counts. This indictment was for voting for this purchase.

10 Vroom, 407, State vs. Halsted.

The *first class* of counts was for exceeding appropriations of 1876–1877.

The *second class* of counts was for exceeding appropriations of 1877–1878.

Speer pleaded guilty to the second class of counts, and the State entered a *nolle pros.* as to the first class.

Halsted was convicted upon the indictment generally.

On writ of error to the Court of Errors and Appeals of

New Jersey, the Court of last resort of the State of New Jersey, the Court in the case of Halsted affirmed the judgment on the ground that the resolutions, the purchase was in excess of the appropriations of the years 1876–7, and they reversed the judgment in the case of Speer, because the counts of the indictment charging that it was in excess of the appropriations of the year 1876–1877, having been *nolle pross'd*, the second class of counts charging the excess of the years 1877–8 did not present any legal intelligible offence.

The Court holding distinctly that the resolutions, the contract, the purchase by its very terms was an excess of the appropriations of the years 1876–7, and by its terms an excess of any existing appropriation.

Therefore we have the two following distinct principles which render the whole contract *ultra vires*.

1. That appropriations must precede the expenditure or the incurring of the obligation.
2. That the contract in this case was in excess of any preceding or existing appropriations.

The cases cited in brief of counsel for appellant, where recovery has been permitted upon a contract, said to be *ultra vires*, where a penalty has been inflicted upon the members voting or acting, are all cases where the corporation has received the benefit of another's property, used it —to the benefit of the corporation, and then pleaded or set up in defence to the action for the recovery of the value of the property—the *ultra vires* of the transaction—or that class of cases arising between individuals solely under general laws, or under acts imposing penalties for doing certain acts, and the question afterwards arises between individuals as to the recovery of the consideration on the contract.

The latter two classes of cases relates solely to individuals, and not corporations, as in cases Cremame vs. LeClare, 2 Camp. 144, and Harris vs. Randall, 12 Howard, 79.

The other classes of cases relating to municipal corporations relate to that class of cases where work is done for such corporations as paving and improving streets, erecting public buildings, or other work, when they have furnished gas or other materials under an *ultra vires* contract, and then the doctrine is held that in order to do justice between the parties payment must be made, because the parties in no sense can be put back in their former positions.

This is the doctrine of corporations being estopped to set up in defense *ultra vires* upon an executed contract.

As has been shown of the resolutions, that they are *ultra vires*, so that the whole transaction is void and illegal, and it applies as well to the purchase as to the bonds, and affects the right of Crampton to recover as well upon the consideration as upon the bonds.

If the bonds are *ultra vires* then the whole transaction is; the bonds cannot be separated from the consideration; the deed which expresses the consideration cannot be separated from the resolutions; they are all parts of one transaction, and in their nature inseparable; a transaction notoriously in violation of law, and coming completely within the doctrine of an *ultra vires* contract.

Robert vs. Mayor, 5 Abb. Pr. 41.
Howes vs. Racine, 21 Wis. 514.

The counties of the State of New Jersey are but quasi corporations, and more subject to the policy of the State than other municipal corporations, and are held to the strictest compliance with the powers conferred by the grant of powers by the Legislature. Counties are but the agents of the State, to carry out its policy. They must keep closely within their powers. It cannot exceed, of course, its special grant of power, neither can it depart from the mode established by law for the exercise of such powers.

If it does, its act is *ultra vires*.

The fourth section of the general act providing for taxation for county purposes is a limitation upon the exercise of its powers. It shadows forth the policy of the law, and the acts of 1874 and 1876 by legislative enactment embody that policy into express terms, and it may be well to recollect that limitations of powers are very often implied because they are not granted.

As to *ultra vires* I cite:

Dillon Municipal Corporations, § 55–108, § 381, § 415, 433, 731, 766.

Mr. Crampton is not an innocent party. Not a third party: He had full knowledge of the law. He was bound to know the corporate power, or want of power of the board. He accepted the terms of the resolutions and purchase. He was bound to take notice of the *ultra vires*.

Parties in whose favor the illegal vote was made, though they incurred expenditures on the face of it, are not third persons in the meaning of the principle.

Claflin vs. Hopkinton, 4 Gray, 502.
Hodges vs. Buffalo, 2 Denio, 110.

The contract is *ultra vires* and void.

IV.

The appellee argues that the contract has been executed, and that if *ultra vires*, yet being an executed contract, the county is bound to pay, if not upon the bonds, then upon the consideration, or in other words, in its broadest application, the doctrine of executed *ultra vires* contracts as applicable to private corporations, must be here applied, and the appellee allowed to recover.

This contention is based upon the assumption that the contract has been entirely executed, the deed delivered this defendant has entered into *actual* possession, has enjoyed the rents and profits, and enjoys the benefits of the property for the purposes for which it was purchased—in other words, has received all the benefits of the purchase.

This contention is also based upon the assumption that Mr. Crampton cannot be placed in the position he was at the time of the purchase.

It will be seen that both these assumptions are not well founded.

But in the first place it will be well to ascertain how far the doctrine of executed *ultra vires* contracts applies to municipal corporations.

Our contention is, that it applies to no such case as the present.

The case of Clemame vs. LeClare, 2 Campbell, 144, has already been adverted to; so also has been the case Harris vs. Runnell, 12 Howard, 70. These were cases between individuals.

Then follow the class of cases which arise between individuals and private corporations.

Green's Brices Ultra Vires, page 42 and notes; also page 372 and notes.

But in regard to municipal corporations the rule is stricter against the validity of *ultra vires* contracts.

Green's Brices Ultra Vires, page 42 and note; also pages 372 and notes.

The cases cited in the brief of counsel of the appellant, where the recovery has been allowed upon contracts executed *ultra vires*, when penalties were to be inflicted in one way or another, upon members voting to incur the liability, are all cases, where work had been done and the corporation had the benefit of it, and materials furnished and used, and the acts done were beyond recall, and no return of the municipal body could put the parties in the same, or as good position, except the payment for the work done or materials furnished, and then the defence as *ultra vires* has been set up as a bar to recovery of the worth of the work done or the materials furnished.

As an illustration of this principle, the case of the hundred barrels of flour furnished and used by the lunatics of the county, under an *ultra vires* contract will serve as well as any illustration which can be thought of.

Of course the county must pay for it (not the contract price), but just what it is worth. This principle is of familiar application in our courts in dealing with municipal corporations.

But suppose after delivery of the flour, it was discovered that the contract was *ultra vires*, and the flour was returned or offered to be returned, and the return refused, would the party then furnishing the flour be entitled to recover?

In the case of the City of Memphis vs. Brown, 20 Wall. 289, was a case where the contractor had done work which the city had the benefit of—a case where there could be no return to their original position—where the contractor could not be placed in the same or as good a position. The city also in the case was obliged to receive the benefit of work done and materials furnished, and could not rid itself in any way of the benefit of the work done by the plaintiff. The city was bound to pay for it.

The case cited of Hitchcock vs. Galveston, 6 Otto, 341, was a case in which the city received from the contractor materials which were actually used by the city, and work done for it, which it received and used.

Neither of these cases is an authority upon this case; in both cases the contract was legal. Here the contract is illegal in its inception.

The rules of *ultra vires* contracts are stricter as to municipal corporations—stricter even yet it seems to me as applied to quasi-corporations, in relation to the validity of such contracts.

Now let us briefly examine the facts in this case as bearing upon the principles applied to executed *ultra vires* contracts.

In the first place if it be an executed contract, that only can operate against the corporation—not against the tax-payer, whose suit this is.

But it is not an executed contract, in the sense that it operates, so that the principle of *ultra vires* cannot apply.

True the resolutions passed—true the deed was made—true the bonds were issued; acts, all of them, of a legal character—acts, all of them, to which Crampton was a party affected with knowledge of the illegality of the transaction. No possession was ever taken of the land. No enjoyment thereof was ever had by the county, for any of the purposes for which it was purchased, nor for any other purpose. No benefit has ever arisen to the county from the purchase—they have received no benefit from it. No rents or profits of the property have ever come into the hands of the county, or into its treasury.

This is not an executed contract which prevents the tax-payers from maintaining a suit to put the parties back in their original positions.

It can hardly be imagined by what argument, it can be shown, that the corporation has here received any benefit of this *ultra vires* contract, and it cannot be contended that even an executed *ultra vires* contract can be upheld unless a clear benefit has been received; in fact the term "executed," denotes a benefit received. The county has not proceeded to use this property for any purpose whatever. In fact it could not, for the adjudications of the State Courts prevented the board from so doing. It is in the "*exact*" condition it was at the time of the purchase. That it remains in this condition is the fault of Mr. Crampton himself. After the decision of the State Courts annulling his contract with county, the property was his to demand; he refuses to receive it, and asks a recovery upon the bonds.

Another answer to this contention is, that these parties can be put in the same position. The land remains the same as it did at the time of the purchase. It is all there. The bonds are under the control of Crampton. By decree of a Court of Equity, or by voluntary action the bonds can be surrendered, the property reconveyed, and the mortgages

of Harrison rehabitated; the rents and profits are Crampton's, and if the county has received any constructive benefit (there being no real benefit) an accounting renders justice to Mr. Crampton. It is justice that this doctrine upholds, nothing more. It is not intended that the party shall obtain an advantage under the principles applied to executed *ultra vires* contracts, but that the benefit he has parted with shall be returned to him in the most expeditious manner, and that justice may be done him.

The question is, can the parties be put in their previous position. If they can, then it is the end of the claim under an executed *ultra vires* contract. The justice which the law seeks has been attained.

Green's Brices Ultra Vtres, 372 and note.

If this was not the rule, the officers and agents of a corporation by a speedy dispatch of such transactions as this purchase, could wholly avoid one of the most salutary principles of law created for the protection of society.

If the mere exchange of papers, as in this case, constitutes a perfect bar to an application of this doctrine, then the policy of our laws has been in vain, and the taxpayer is entirely at the mercy of the official.

The doctrine that a corporation is liable upon an executed *ultra vires* contract, does not extend to municipal corporations, and all the cases referred to by counsel for the appellant, and in Green's Brices Ultra Vires are cases between private individuals, or relates to private trading corporations, and we here contend that this doctrine does not extend to municipal corporations any farther than what is know and called "implied municipal liability," and the whole doctrine is fully stated in

Dillon Municipal Corporation, § 384.

He says: "That it applies to cases where money or "other property of a party is received under such circum- "stances that the general law, independent of express con- "tract, imposes the obligation upon the city to do justice "with respect to the same. If the city obtain money of "another by mistake or without authority of law, it is her "duty to refund it, not from any contract entered into by her "on that subject, but from the general obligation to do "justice, which binds all persons whether natural or arti- "ficial."

"If the city obtains other property, which does not be-
" long to her, it his her duty to restore it; or if used by
" her, to render an equivalent to the owner, from the like
" general obligation; the law which always intends justice
" implies a promise."

"In reference to money or other property, it is not diffi-
" cult to determine in any particular case, whether a lia-
" bility with respect to the same has attached to the city.

"The money must have gone into the treasury, or been
" appropriated by her, and when it is property other than
" money, it must have been used by her or be under her
" control.

"And even to these general principles there are limita-
" tions or exceptions in many instances, as when prop-
" erty or money is received in disregard of positive pro-
" hibitions."

Dillon M. C. § 384, and notes.

I submit that the decree of the Court below ought to be affirmed.

J. H. LIPPINCOTT,

Counsel of the Board of Chosen Freeholders of the County of Hudson—one of the Defendant's below, and one of the Appellees.

In Supreme Court of the United States.

No. 1070.

MAHLON B. CRAMPTON,

Appellant.

and

AUGUSTUS ZABRISKIE et als.,

Appellees.

PHILADELPHIA BAR ASSOCIATION

On Appeal from U. S. Circuit Court

For the District of New Jersey.

STATUTE.

DAVISON & CO., Law Printers, 19 Montgomery Street, Jersey City.

STATUTE.

AN ACT to create the county of Hudson.

Whereas, the inhabitants of the township of Bergen and Lodi, of Jersey City, and the villages of North Bergen, Harsimus, Hoboken, West Hoboken, Weehawken, New Durham, Secaucus, and Greenville, respectively, have by their petitions set forth, that by reason of the great increase of business from year to year, calling for the attendance of parties, jurors, and witnesses, at distances varying from twelve to twenty miles, and the proximity of the city of New York requiring the exercise of a rigid police, they are at an inconvenient distance from the county town, and the courts of justice, and have prayed that a new county should be erected—Therefore, Preamble.

Sec. 1. Be it enacted by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all that part of the county of Bergen, as the same stood before the passing of this act, contained within the following boundaries, viz: beginning at the north easterly corner of the present township of Bergen, in the boundary line between this state and the state of New York; thence, running westwardly on the line which divides the said township of Bergen from the township of Hackensack, to the Hackensack river; thence, down the middle of the said Hackensack river, to the middle of the turnpike road of the New Barbadoes Toll-Bridge Company; thence, westwardly along the middle of the said turnpike road, in the various courses thereof, to the middle of the abutment of the bridge across the Passaic, opposite to the village of Acquackononck; thence, along the middle of said bridge to the point where it meets the line between the present county of Passaic and Bergen; thence, down the said Passaic river and Newark bay, in the several courses thereof, on the boundary lines between the county of Bergen, as the same stood before the passing of this act, and the counties of Passaic and Essex, to Kill-Van-Kull; thence, eastwardly, on the boundary line between this state and the state of New York, to the Hudson river; thence, northwardly, Boundaries of the county of Hudson.

continuing on the said boundary line between this state and the state of New York, up the said Hudson river to the place of beginning, be and the same is hereby erected into a separate county, to be called the county of Hudson; and said lines shall hereafter be the division lines between the counties of Essex, Passaic, and Bergen, and the state of New York, and the said county of Hudson, respectively.

Jurisdiction, rights, &c. of county of Hudson.

Sec. 2. And be it enacted, That the said county of Hudson shall have and enjoy all the jurisdiction, powers, rights, privileges, liberties, and immunities which any other county in this state doth or may enjoy; and that the said county of Hudson shall elect, in the same manner as other counties in this state do, one member to represent said county in the general assembly, and one member to represent said county in the legislative council of this state, and no more, until otherwise regulated by law.

Representation in council and assembly.

Jurisdiction of judges, justices, &c., within the county of Hudson.

Sec. 3. And be it enacted, That the judges, justices of the peace, sheriff and other officers, within the limits of the county of Bergen, as the same stood before the passing of this act, shall continue to hold, exercise and enjoy their several and respective offices and appointments, with the powers and privileges thereto belonging, within the said limits, until the second Monday of April next after the passing of this act; and all courts at the time of the passing of this act existing and being within the said limits, shall continue to have and exercise, respectively, jurisdiction within the same, until the said second Monday of April next, in the same manner as if this act had not been passed; and that on and after the said second Monday of April next, and until their respective terms of office in and for the county of Bergen shall expire, all persons in office at the time of the passing of this act and resident within the bounds of the said county of Hudson, and every of them, except the clerk, surrogate and prosecutor of the pleas, shall hold, exercise and enjoy their respective offices, with all the power, authority, privileges, and emoluments thereto belonging, within the limits of the said county of Hudson, as officers of said county, as fully and effectually to all intents and purposes as if they had been elected or appointed to their said offices, respectively, within the said county of Hudson; provided however, that all judges of the court of common pleas and all justices of the peace within the said county of Hudson, shall qualify according to law, on or before the second Monday of April next, as officers of the said county of

Proviso.

Hudson; and that the board of chosen freeholders of the county of Bergen, as it existed before the passing of this act, shall continue to exist, with all the duties, powers, privileges, authorities and emoluments thereto belonging, until the second Wednesday of May next, after the passing of this act; provided always, that the said board shall not have power to raise or order the raising by assessment or tax, or in any other manner, any sum or sums of money for any purpose, or to vote or grant any sum of money whatsoever for any purpose other than to defray and pay any debt or charge existing against the said county of Bergen, at the time of the passing of this act, except to compensate themselves according to law, for their services as such chosen freeholders, up to the said second Wednesday of May next. Proviso.

Sec. 4. And be it enacted, That all actions, suits, appeals, prosecutions, and other legal proceedings commenced, or that may be commenced or depending in the supreme court of this state, or in any court or before any justice of the peace within the limits of the county of Bergen, as the same stood before the passing of this act, before the said second Monday of April next, shall be in no wise affected by this act, but the same shall and may be prosecuted in said county of Bergen, and before said courts, in the same manner as if this act had not been passed, any thing herein to the contrary notwithstanding; provided, that in all such causes pending in the supreme court, where the defendant in any transitory action does at the time of the passing of this act, reside within the limits of the said county of Hudson, or where, in any local action, the cause of action arose within the bounds of said county of Hudson, either party may, at his election, on application to the said court for that purpose, have the venue in said action changed to the said county of Hudson, and the cause tried therein, as if the venue in the said action had originally been laid in said county of Hudson. Suits pending in the county of Bergen not to be affected. Proviso. Venue may be changed.

Sec. 5. And be it enacted, That until a sheriff and coroners shall be elected in and for the said county of Hudson, and shall enter upon the duties of their respective offices, the sheriff and coroners of the county of Bergen shall discharge and perform all the duties, possess all the powers, and be subject to all the liabilities of sheriff and coroners of the said county of Hudson, and be entitled to the fees allowed by law for all services by them or either of them performed; and the Sheriff and coroners of Bergen to act till such officers are elected for county of Hudson.

said sheriff and his sureties shall be liable for any default of misconduct in the discharge and peformance of said duties, in the same manner as if such default or misconduct had occurred in the county of Bergen; and that the said sheriff shall, on or before the second Monday in April next, take and subscribe, before a judge of the inferior court of common pleas in, and for the said county of Hudson, the oath or affirmation prescribed in and by the fourth section of "An act concerning sheriffs;" which oath or affirmation, the judge before whom the same shall be taken, shall cause to be filed in the office of the clerk of said county.

Boundaries of township of Lodi in the county of Bergen.

Sec. 6. And be it enacted, That the inhabitants of that part of the township of Lodi lying north of the New Barbadoes Toll-Bridge Company's road, be and they and their successors are hereby constituted a body politic and corporate, by the name of the inhabitants of the township of Lodi in the county of Bergen, and shall hold their first town meeting at the tavern now kept by John B. Vreeland in said township, and afterwards at such place as the inhabitants shall determine.

Jail of Bergen constituted jail for Hudson until a new jail is prepared.

Sec. 7. And be it enacted, That the jail of the county of Bergen be and it is hereby constituted a jail for the confinement of all prisoners of or from the said county of Hudson, until a jail shall be prepared in said county of Hudson; and the sheriff or other officer having the lawful custody of any prisoner within said county of Hudson, is hereby authorized to carry and confine such prisoner to and in the jail of the county of Bergen; and the keeper of the said jail is hereby required to receive and safely keep every such prisoner so delivered to him, in the same manner and under the same penalties as he is or may be by law required to keep and provide for the prisoners of the county of Bergen, until such prisoners shall be demanded by the proper officer or officers of the said county of Hudson, or by other due and legal authority; and said keeper shall be entitled to receive from the board of chosen freeholders of the said county of Hudson, such fees and compensation for the support of the prisoners of said county, as are or shall be allowed by the board of chosen freeholders of the county of Bergen.

Sec. 8. And be it enacted, That the present township of Bergen, and that part of the present township of Lodi, within the limits of said county of Hudson, and the inhabitants thereof, respectively, be and they are hereby constituted bodies corporate and politic in

law, by the following names, that is to say:—the inhabitants of the township of Bergen, shall be styled and known by the name of "the inhabitants of the township of Bergen, in the county of Hudson;" and the inhabitants of that part of the present township of Lodi, within the limits of the said county of Hudson, shall be styled and known by the name of "the inhabitants of the township of Harrison, in the county of Hudson;" and that the inhabitants of the said townships of Bergen and Harrison, respectively, shall be, and they are hereby vested with, entitled to, and authorized to exercise and enjoy all the franchises, powers, privileges, immunities, and authority, and shall be and hereby are made subject to all the rules, regulations, and government, which the inhabitants of the other townships of this state may be entitled and subject to; that the part of the said county of Hudson, and the inhabitants thereof at present incorporated, styled, and known by the name of "the Mayor and Common Council of Jersey City," shall be and remain a body corporate and politic in law, by the name of "the Mayor and Common Council of Jersey City," in the same manner as though this act had not been passed, save and except that the same shall constitute a part of the said county of Hudson, and have the same relation to the said county of Hudson, as the same heretofore had to the said county of Bergen, in all respects; that the chosen freeholders of the said townships of Bergen and Harrison, and of Jersey City, and their successors, shall be and they hereby are constituted a body politic and corporate in law, and they shall be styled and known by the name of "the Board of Chosen Freeholders, of the county of Hudson," and shall have, hold, use, exercise, and enjoy the like rights, powers and authority, and be subject to all the provisions of the laws for the time being, as the boards of chosen freeholders of the other counties of this state are or shall be entitled and subject to; and that the said board of chosen freeholders shall meet at the house now occupied by Henry Drayton, called the Buckhorn hotel, in Bergen township, on the day appointed by law for the next annual meeting of the boards of chosen freeholders, in other counties of this state, and afterwards at such times and places as they may appoint or shall be required by law, until a courthouse shall be provided for said county of Hudson.

Boundaries and corporate names of townships in Hudson.

Board of chosen freeholders of the county of Hudson incorporated.

Sec. 9. And be it enacted, That the first town meeting, hereafter to be held in the township of Harrison, shall be held on the second Monday of April

Times and places of holding the first town meet-

ings in the county of Hudson.

next, at the inn now kept by Thomas Watkins, in said township; and that the next town meeting, in the township of Bergen, shall be held at the Buckhorn hotel, now kept by Henry Drayton, on the second Monday of April next; and that the town meetings in said townships, respectively, shall thereafter be held annually, on the second Monday of April, at such places as the electors of said townships, respectively, shall from time to time appoint, under the existing laws of this state.

Times and place of holding the courts of the county of Hudson.

Sec. 10. And be it enacted, That the court of common pleas, court of general quarter sessions of the peace, and orphans' court, in and for the county of Hudson, shall hold four terms each, to wit: one on the fourth Tuesday of April, one on the fourth Tuesday of July, one on the first Tuesday of October, and one on the fourth Tuesday of December, in each and every year; and that the circuit court and court of oyer and and terminer and general jail delivery, shall be held in, and for said county, at the times of holding the said court of common pleas; and that until the seat of justice for the said county shall be determined, and a court-house built or procured for the said county, or another place in the said county shall be provided therefor by the board of chosen freeholders, the said courts shall be held at the Lyceum building, in Jersey City; and all writs and process which may be issued out of the said courts after this act goes into operation, and before the fourth Tuesday of April next, shall be tested on the day on which the same are issued, respectively, and in the name of one of the judges of the said courts and shall be made returnable at the place where the said courts shall be held; and it shall be the duty of

Sheriff of the county of Bergen to publish notice thereof.

the present sheriff of the county of Bergen, to give notice of the time and place of holding said courts, by publishing this section in a newspaper published in the said county of Hudson, for six weeks, successively, after the passing of this act; provided always, that the jurors to be summoned and returned to the first term of the courts of said county of Hudson, shall and may be selected and drawn according to law, at least ten days before the commencement of said courts.

Judgments in certain cases in the county of Bergen to be in force in the county of Hudson.

Sec. 11. And be it enacted, That all judgments already obtained, or that may hereafter be obtained, in the courts of the county of Bergen, upon any action, suit or proceeding actually commenced or depending before the said fourth Tuesday of April next, shall be of the same force and effect within the former limits of

the said county, as if this act had not been passed, and writs of execution or other legal process may be issued thereon, directed to the sheriff or other lawful officers of the county of Bergen, who are hereby authorized and directed to execute the same within the limits of the said county of Hudson, in the same manner they should by law have done in case this act had not passed; and that upon such judgment or judgments, a writ or writs of scire facias may issue, as allowed by law in other cases, directed as aforesaid, and thereupon such further proceedings shall be had as the party prosecuting the same would have been entitled to in other cases, and in the same manner as if this act had not been passed.

Militia of Bergen and Hudson constituted separate brigades.

Sec. 12. And be it enacted, That the militia of the said county of Hudson, shall form a separate brigade, to be called the Hudson brigade, and shall be attached to the first division of the militia of this state; and the militia of the county of Bergen, shall form a separate brigade, to be called the Bergen brigade, and shall be attached to the first division of the militia of this state; and said brigades shall be subject to the same laws as the other brigades of this state.

Times and places of holding election to determine in what township in Hudson the seat of justice is to be located.

Sec. 13. And be it enacted, That an election to determine in which township or city in the said county of Hudson, the seat of justice shall be, and in which the court house and other public buildings shall be located, shall be held at the places herein before appointed for holding the next annual town meetings, in the townships of Bergen and Harrison, and the place of holding the next annual election for city officers, in Jersey City, on the first Tuesday in June next; that the clerks of the said townships and city, respectively, shall give notice of the time and place of holding said election, in the said townships and city, by advertisements set up in three of the most public places in the same, respectively, at least four weeks before the said time, and by causing the said notice to be published in at least one of the newspapers published in the said county of Hudson.

Mode of conducting election.

Sec. 14. And be it enacted, That on the day herein before appointed for that purpose, at the hour of ten o'clock in the forenoon, the officers of the said townships and city who are by law required to hold elections for members of the legislature, sheriff and coroners, are hereby required to open an election to determine in which township or city the seat of justice of the said county shall be located as aforesaid; which elec-

tion shall be conducted, in all respects, according to the same rules and regulations, and under the same restrictions and penalties, and the officers thereof shall have the same power and authority, as are prescribed by the laws of this state, regulating the election of members of the legislature, sheriff, and coroners, except so far as the same are herein modified, and shall be closed at the hour of seven o'clock in the afternoon of the same day.

Officers of election to be sworn.

Sec. 15. And be it enacted, That the officers holding or conducting the said election, shall severally, before they receive any vote, take an oath or affirmation faithfully, fairly, and impartially, to execute the duties required of them by this act, which oath they are hereby authorized to administer to each other.

Qualifications of voters.

Sec. 16. And be it enacted, That every free white male citizen of the United States, of the age of twenty-one years or upwards, and who shall have resided within the limits of the said county of Hudson, hereby created, six months next preceding the day of such election, shall be entitled to vote thereat.

Proceedings of officers of election at the close of the polls.

Sec. 17. And be it enacted, That the judges and inspectors of said election in the said townships and city, at the close of the polls, shall carefully count the votes received at said election, and make a certificate, under their hands and seals, containing the whole number of votes taken in the said townships and city, and the number taken for the townships and city, respectively, voted for as the seat of justice for said county, and shall, on or before the hour of three o'clock in the afternoon of the Saturday next after the day of election, transmit and deliver to the clerk of the inferior court of common pleas of said county of Hudson, their respective certificates, together with the list of voters, whose votes were taken at the said election, which certificate and list shall be filed by said clerk in his office; and the said clerk shall faithfully count the said votes in a public manner; and the township or city designated by a plurality of the said votes, shall be the township or city in which the seat of justice for said county shall be located; and it shall be the duty of the clerk of said county, to transmit a certificate, under his hand and seal, of the township or city so chosen as the seat of justice, to the board of chosen freeholders of said county, at their next meeting, which certificate shall be entered in words at length on the minutes of said board, who shall thereupon select and determine the particular site or sites in said township or

city where the court house, jail, and other public buildings shall be located.

Fees of officers.

Sec. 18. And be it enacted, That the clerk of the said county, and the judges, inspectors, and other officers of the said election, shall be entitled to the same fees as they are entitled to for like services, by the laws of this state, regulating elections; and the clerk of said county, for any extra service required by this act, shall be allowed such further sum as the board of chosen freeholders of said county shall deem just, to be paid by the collector of said county.

Board of chosen freeholders authorized to purchase lands for public buildings.

Sec. 19. And be it enacted, That the board of chosen freeholders of the said county shall, upon a call of their director, or upon their own adjournment, from time to time, as often as occasion may require, meet together at such place as they may appoint for that purpose; and said board, or a majority thereof, are hereby authorized, in the corporate name of said board, to contract for and take a deed or deeds for land on which to erect the court-house, jail, clerk's and surrogate's offices, and other public buildings, and to erect said buildings, or to purchase or otherwise procure and provide the same; and also to order money to be raised by tax, to be assessed on the inhabitants of said county, or by loan, for the purpose of defraying the cost of purchasing said land, and of building, purchasing, or otherwise procuring and providing said public buildings.

County tax to be raised for the purpose.

Sec. 20. And be it enacted, That to raise money by tax for the purposes mentioned in the last section, the assessors and collectors of the several townships in said county, shall, in their respective townships from time to time as occasion may require, assess and collect such sums of money as the board of chosen freeholders of said county shall direct, in the manner in which other county taxes are assessed and collected.

Proceedings on completion of public jail of Hudson county.

Sec. 21. And be it enacted, That it shall be lawful for any three or more judges of the inferior court of common pleas in and for the said county of Hudson, at the request of the director of the board of chosen freeholders, when, in their opinion, the jail erected or procured in and for said county is finished or prepared, so as to be safe for the confinement of prisoners, so to certify in writing, under their hands, to the clerk of the court of common pleas of said county; and the said clerk shall then enter said certificate on the minutes of said court, and deliver a copy thereof, to the sheriff of said county, or the person acting as such sheriff;

and thereupon it shall be the duty of the said sheriff, or person acting as such sheriff, to remove all prisoners of said county that may then be confined in the said jail herein before provided for the safe keeping of said prisoners to the jail of the said county of Hudson, there to be confined according to law; and such removal shall not be deemed an escape, or in anywise chargeable to the sheriff of said county of Bergen.

Deputy clerk of Bergen, at Harsimus to deliver his books and papers to clerk of Hudson.

Sec. 22. And be it enacted, That so much of the eighth section of the act entitled, "An act to incorporate the Associates of the Jersey Company," passed the tenth of November, 1804, as requires or authorizes the clerk of the county of Bergen to appoint a deputy, who shall reside and keep an office within the district of country formerly distinguished by the name of the Island of Harsimus, and which includes Powles Hook, for the recording of all deeds, mortgages, and other writings which might thereafter be made and executed relating to real estate situate within the said district, or any part thereof, be and the same is hereby repealed; and that it shall be the duty of the said deputy clerk to deliver up, and without fee or reward, all records, books, maps, papers, or other instruments appertaining to said office to the clerk of the county of Hudson, on the second Monday of April next after the passing of this act; and that the same shall be taken and considered for all purposes whatsoever, as the proper records of the said county of Hudson appertaining to the office of clerk in said county.

Interest of that part of Bergen of which Hudson is formed in the surplus revenue not to be impaired.

Sec. 23. And be it enacted, That the right and interest of that part of the county of Bergen included within the bounds of the county hereby created, in and to such portions of the surplus revenue of the general government as have been paid to the said county of Bergen, under the act entitled, "An act making provision for the deposit and distribution of so much of the surplus revenue of the United States as now is or may hereafter be apportioned to and received by this state," passed the tenth day of March, 1837; and all interest money which has accrued or may accrue thereon, shall not be deemed to be in any wise lessened or impaired by this act, but shall be as good and effectual in law as if said territory had never been separated from the county of Bergen.

Board of chosen freeholders of Bergen to pay to treasurer the pro-

Sec. 24. And be it enacted, That the board of chosen freeholders of the county of Bergen, as the same stood before the passing of this act, shall, on or before the first Monday of April next, after the passing of this

act, ascertain and state in writing, the share of such portion of said surplus revenue as has heretofore been paid to the said county of Bergen, upon which that portion of the said county hereby erected into the county of Hudson would have been entitled to receive the interest, in proportion to the amount of taxable property and rateables therein, according to the assessment made next before the payment of the said surplus to the said county, and shall within ninety days thereafter, deliver such statement to the treasurer of this state, and shall within the term aforesaid pay to the said treasurer the interest which shall have accrued on the said share; and shall, also, within the term aforesaid, pay to said treasurer the principal of said share, or deliver to said treasurer the bonds and mortgages or other securities by the said county of Bergen taken and received to secure the re-payment of such share, or other good and sufficient securities for the same amount, deducting therefrom the amount paid in pursuance of the nineteenth section of the act to incorporate Jersey City, passed February 22, 1838; and a just proportion of all costs and expenses incurred in the receiving, loaning, and management of said surplus, having first duly assigned the same to the board of chosen freeholders of the said county of Hudson.

portion of surplus revenue to which Hudson is entitled.

Sec. 25. And be it enacted, That as soon thereafter as the board of chosen freeholders of the said county of Hudson, shall pledge the faith of the said county for the re-payment of the amount of the said share, and shall make, execute and deliver to the treasurer of this state a certificate of deposit for the amount of such share, according to the provisions of the first section of the act entitled, "An act making provision for the deposit and distribution of so much of the surplus revenue of the United States as now is or may hereafter be apportioned to and received by this state," passed the tenth day of March, 1837, and in the form heretofore prescribed and used, which the said board of chosen freeholders are hereby authorized and empowered to do, it shall be the duty of the said treasurer to pay and deliver to the said board of chosen freeholders of the said county of Hudson, or to such person or persons as they shall appoint to receive the same, all the moneys, bonds, mortgages, and other securities so as aforesaid paid and delivered to him, and also to endorse upon the certificates of deposit, heretofore given and executed by the board of chosen freeholders of the county of Bergen, an acknowledgment of the receipt of so much

Treasurer to pay the same to board of chosen freeholders of the county of Hudson.

of the principal of the said surplus as shall have been paid or delivered to him, in the manner aforesaid, by the board of chosen freeholders of said county of Bergen; which acknowledgment shall forever thereafter release and discharge the said board of chosen freeholders and the said county of Bergen from all liability for or on account of the sum or amount, the receipt whereof shall be so acknowledged.

Hudson board of freeholders to have the same rights respecting bonds assigned them as other counties.

Sec. 26. And be it enacted, That the board of chosen freeholders of the said county of Hudson shall, by virtue of said assignment, possess and be vested with the same right, title, interest, and right of action in and upon the bonds and mortgages and other securities so assigned to them as the board of chosen freeholders of the county of Bergen possessed or was vested with before the assignment thereof, and shall have and hold the same for the like uses and purposes, and subject to the same liabilities and conditions, in all respects, as are prescribed in the act entitled, "An act making provision for the deposit and distribution of so much of the surplus revenue of the United States as now is or may hereafter be apportioned to and received by this state."

Mode of apportionment of the surplus revenue by the board of freeholders of Hudson to the towns.

Sec. 27. And be it enacted, That the board of chosen freeholders of the said county of Hudson, in the management of the principal of said surplus, and in the apportionment and payment of the interest that has accrued or may accrue thereon, shall be governed and regulated by the statement mentioned in the twenty-fifth section of this act, which shall be filed by the treasurer of this state; and that if any further instalment or portion of the said surplus revenue shall at any time hereafter be received by this state, a rateable and just share or part thereof, in proportion to the sum or amount mentioned in the said statement, shall be deducted from the share or portion of the said county of Bergen, and shall be paid by the proper officers of this state, to the board of chosen freeholders of the said county of Hudson, in the same manner, in all respects, as the like payments shall be made, to the board of chosen freeholders of the other counties of this state.

Number of representatives of Bergen county in the legislature.

Sec. 28. And be it enacted, That hereafter the county of Bergen shall elect, in the same manner as other counties in this state, two members to represent said county in the general assembly, and one member to represent said county in the legislative council of this state, and no more, unless otherwise authorized by law.

Apportionment of school fund to Hudson.

Sec. 29. And be it enacted, That it shall be the duty of the trustees of the school fund of this state, on or before the first Monday of April next, to apportion to the said county of Hudson its just share and proportion of the annual appropriation of the income of the school fund according to law.

Executors, administrators, guardians and trustees residing in Hudson county may account therein notwithstanding letters were issued by surrogate of Bergen, on filing copies of proceedings had in Bergen with surrogate of Hudson.

Sec. 30. And be it enacted, That in all cases in which letters testamentary, or of administration, or guardianship, or other power or authority, hath or have been or shall be issued or granted to any executor or executors, administrator or administrators, guardian or guardians, trustee or trustees, by the surrogate or orphans' court of the county of Bergen, and in which such letters testamentary, or of administration, or guardianship, or other power or authority, should or might by law have been issued or granted by the surrogate or orphans' court of the said county of Hudson, if then existing, it shall and may be lawful for the said executor or executors, administrator or administrators, guardian or guardians, trustee or trustees, or the survivors or survivor of them, to procure from the surrogate of the county of Bergen, true copies, duly certified under his hand and seal, of all orders, decrees, inventories, accounts, or other proceedings or papers recorded or filed in the office of such surrogate, and relating to or made by such executor or executors, administrator or administrators, guardian or guardians, trustee or trustees, and to file the same with the surrogate of the said county of Hudson; and thereupon the surrogate and orphans' court of the said county of Hudson shall have the same jurisdiction, power and authority over or concerning such executor or executors, administrator or administrators, guardian or guardians, trustee or trustees, or the survivors or survivor of them, and be authorized and empowered to state, audit, settle, and allow his, her, or their account or accounts, and to enforce and compel the due and faithful fulfilment and performance of his, her, or their duties and trusts in the same manner, in all respects, as the surrogate or orphans' court of the county of Bergen might or could have had or done if this act had not been passed; and the making and rendering, and the neglect or failure to make and render any inventory, statement, or account to the surrogate of the said county of Hudson, or to observe and perform any order or decree of the said orphans' court, shall have the same force and effect against such executor or executors, administrator or administrators, guardian or

guardians, trustee or trustees, and the survivors or survivor of them, and his, her, or their respective surety or sureties, and all other persons whomsoever, as the like making and rendering, or neglect or omission in reference to the surrogate or orphans' court of the county of Bergen would by law have had; provided always, that nothing in this act contained shall be so construed as to authorize or empower the orphans' court of the said county of Hudson to make any order or decree for the sale of any lands or real estate not situate within the said county.

Proviso.

Sec. 31. And be it enacted, That when any executor, administrator or guardian, who was or shall be appointed in the said county of Bergen before this act shall go into operation, shall die, cease to act, or for any other cause be disqualified, or whenever any letters of administration, guardianship, or letters testamentary shall be vacated, then and in such cases, the surrogate or orphans' court of the county of Hudson, is hereby authorized to issue new letters of administration, or letters of guardianship, or letters of administration with the will annexed, according to law, as the case may require; provided, the testator, or intestate, at the time of his or her death, resided within the territory which shall then compose the said county of Hudson, or the estate of the ward or wards lies within the same; and that the surrogate and orphans' court of the said county of Hudson may proceed thereupon as if the letters of administration, letters of guardianship, or letters testamentary had been originally issued by the surrogate of the said county of Hudson.

New letters of administration, &c., may be issued by surrogate of Hudson in certain cases.

Proviso.

Sec. 32. And be it enacted, That it shall and may be lawful for the clerk of the inferior court of common pleas and general quarter sessions of the peace of the county of Hudson, and the surrogate of the said county, to submit their respective official bonds to any one of the justices of the supreme court, and to take and subscribe the oaths or affirmations required of them respectively, by law, before said justice of the supreme court, which said justice is authorized to inspect the said bonds and administer the said oaths or affirmations; and when the said justice shall have approved the said bonds, respectively, and the sureties therein named, and administered the said oaths or affirmations the said clerk and surrogate shall be fully authorized to enter upon and discharge the duties of their respective offices.

Oaths of clerk and surrogate of Hudson to be taken before a justice of supreme court.

Sec. 33. And be it enacted, That the said justice,

by whom the said bonds may be approved and the said oaths or affirmations administered, shall transmit the said bonds so executed and approved of, together with the said oaths or affirmations of office duly taken and subscribed, to the secretary of this state, to be recorded in the secretary's office, and filed in the same.

Oaths and bonds to be recorded in office of secretary of state.

Sec. 34. And be it enacted, That all paupers now chargeable to that portion of the present township of Lodi which lies on the north side of the New Barbadoes Toll-Bridge Company's road, shall be supported by the "township of Lodi in the county of Bergen," and all paupers now chargeable to that portion of the present township of Lodi which lies on the south side of said turnpike, shall be supported by the "township of Harrison, in the county of Hudson."

Division of paupers of townships of Lodi and Harrison.

Sec. 35. And be it enacted, That at all elections to be held in the said county of Hudson, within one year from the time when this act shall take effect, for the choice of electors of president and vice-president of the United States, representatives from this state in the congress of the United States, members of the legislature, sheriff, or coroners, every person who shall have resided in the said county from the time when this act takes effect, and who would have been entitled to vote within the limits of said county, if this act had not been passed, shall be entitled to vote in that township of said county, in which he shall then reside, and that the oaths directed to be administered to persons claiming to vote at such election, and whose right to vote shall be challenged, shall be varied in conformity to the provisions of this section.

Regulations respecting voting for one year.

Sec. 36. And be it enacted, That the said county of Hudson shall not be entitled to any of the lands, property, rights, credits, or effects of the county of Bergen, but that the said county of Hudson shall be liable for its just proportion of the debts, now due and owing by the said county of Bergen, after deducting the amount of monies or other securities now held by said county of Bergen, excepting the surplus revenue.

Hudson not entitled to any lands or other property belonging to Bergen.

Sec. 37. And be it enacted, That this act shall take effect on and after the second Monday of April next, after the passing of this act, except where it is otherwise provided by this act; but, nevertheless, it shall and may be lawful for the joint meeting, at any time before that period, to appoint a clerk, surrogate, prosecutor of the pleas, and all other necessary and proper officers for said county of Hudson, who shall enter upon the duties of their office on the said second Monday of April next, after the passing of this act.

Time of act taking effect.

Passed February 22, 1840.

In Supreme Court of the United States.

No. 1070.

MAHLON B. CRAMPTON,
Appellant.

and

AUGUSTUS ZABRISKIE et als.,
Appellees.

PHILADELPHIA BAR ASSOCIATION

On Appeal from U. S. Circuit Court

For the District of New Jersey.

STATUTES.

DAVISON & CO., Law Printers, 19 Montgomery Street, Jersey City.

STATUTES.

AN ACT to incorporate the Chosen Freeholders in the respective Counties of the State.

Approved April 16, 1846. R. S. 182.

Incorporation and names of boards.

1 The chosen freeholders of the several townships, precincts, and wards in the respective counties of this state, and their successors, shall be and they are hereby constituted a body politic and corporate in law by the following names, that is to say: that the said freeholders in and for the county of Bergen, shall be styled and known by the name of "the board of chosen freeholders of the county of Bergen," (the corporate name of the freeholders in the other counties of the state is precisely the same, substituting in each case the name of the proper county.)

Powers.

2. That the said boards of chosen freeholders in and for their respective counties, and their successors, shall be able and capable to acquire, purchase, receive, have and hold any lands, tenements, hereditaments, goods and chattels in trust to and for the use of their said counties respectively, and for such other uses as are or may be designated by law; to sue or be sued, implead or be impleaded, to make and use a common seal, and the same to alter and renew at their pleasure, and to ordain, establish and put in execution such by-laws, ordinances and regulations, as shall seem necessary and convenient for the government of their respective corporations; provided, the same are not contrary to the constitution or laws of this state.

Proviso.

Process, how served.

3. That when any suit shall be instituted against any of the said corporations, a copy of the summons, precept or such other legal process, as may be issued against the same, shall be left with the director of the board or clerk thereof, thirty days at least before the session of the court to which such process shall be returnable.

May raise money.

4. That it shall be the duty of every such corporation, at their stated and annual meeting or at any other meeting duly held for the purpose, to vote, grant and raise such sum or sums of money for the building, purchasing or repairing of poor-houses, jails, court-houses and bridges, the surveying and ascertaining the lines, the prosecuting and defending the

rights, defraying the public and other necessary charges, and doing, fulfilling and executing all the legal purposes, objects, business and affairs of such county, as they or the major part of them shall deem adequate or proper; all which moneys so raised, shall be applied, paid and expended under the direction and management of the said corporation.

May adjourn.

5. That it shall and may be lawful for such corporation, at their annual or other legal meetings, to adjourn from time to time as they shall judge necessary.

Annual meeting.

6. That there shall be a stated meeting of every such corporation at the place of holding the court of common pleas in and for such county, at the hour of eleven in the forenoon of the second Wednesday in the month of May, annually.

Director to be elected.

7. That it shall and may be lawful for every such corporation to elect, annually, one of their own members to preside at their meetings, who shall be called the director of the board; and in case of his absence or refusal to act, then such corporation shall proceed to the election of another.

Clerk, compensation and duties.

8. That the said corporation shall annually elect some fit person, being a freeholder and resident in the county and not a member of such corporation, for their clerk, who shall be entitled to the sum of one dollar and a half for every day he shall be employed in the duties of his office, and whose duty it shall be to keep the minutes and enter the orders and proceedings of the corporation in a book to be kept for the purpose, and who shall have the custody of the common seal, and the papers, deeds, writings, documents and books relating to the said corporation; which clerk shall, before he enters upon the execution of his office, take and subscribe an oath or affirmation before the director of the board, who is hereby authorized to administer the same, that he will well and faithfully discharge all the duties appertaining to the said office.

Oath.

Papers, etc., to be delivered to successor.

9. That upon the death or expiration of the office of clerk of any of the said corporations, the common seal, and all the minutes, papers, deeds, writings, documents and books of or belonging to such corporations, shall be delivered to the successor in office, on the oath or affirmation of the preceding clerk, or, in case of his death, on the oath or affirmation of his executors or administrators; and if any such clerk, his executors or administrators, shall refuse or neglect

to deliver the same, on oath or affirmation as aforesaid, being lawfully demanded, then every such person shall forfeit one hundred dollars, to be recovered with costs, by action of debt, in any court having cognizance of that sum, in the name and for the use of the said corporation. Penalty.

10. That it shall be the duty of the director of the board, or in case of his absence, inability or death, then of the clerk thereof, on application in writing, subscribed by any three of the said chosen freeholders, and specifying the business, object and purpose of calling the said board, to convene special meetings of the said corporation, by writing under his hand, directed to the respective members thereof, and left at their respective places of abode, at least fourteen days prior to the day of meeting, mentioning therein the time and business, object or purpose of such meeting; and further, that all special meetings shall be held at the place of holding the annual stated meeting; and if any such director or clerk shall, on application as aforesaid, refuse or neglect to call or convene such special meeting of the said corporation, then he shall forfeit one hundred dollars, to be recovered, with costs, by action of debt, in any court having cognizance of the same, in the name and for the use of the said corporation. (See Sec. 46.) Special meetings convened. Where held.

11. That if any of the members of the said corporation shall neglect or refuse to attend at the annual stated meeting, or at any special meeting as aforesaid of such corporation, then such member shall forfeit eight dollars, to be recovered with costs, by action of debt, in any court having cognizance of that sum, in the name and for the use of the said corporation. Penalty for non-attendance.

12. That when any of the said corporations shall pass an order or grant, for the raising of any sum or sums of money for any purpose specified in this or any other act, it shall be the duty of such corporation to direct, in writing, the assessors of the respective townships in the said county, to assess the said sum or sums on the inhabitants and their estates, agreeably to the law for the time being for the raising of money by taxation for the use of the state; and further, that it shall be their duty also to direct, in writing, the time and place of the meeting of the said assessors, to adjust and ascertain the proportion of the said sum or sums to be levied on each township, and the time for collecting the same; which proportion, so adjusted and fixed, shall be assessed and How money assessed and raised.

collected by the respective assessors and collectors of the several townships in such county.

How, when tax required to be raised at different time.

13. That when any of the said corporations shall at any time consider a tax, for any of the purposes specified in this or any other act, necessary to be raised at a time different from the state tax, then the said assessors and collectors shall perform the like duties, be allowed the like compensation for their services in the premises, be liable to the like fines and penalties, to be recovered by the same persons, and in like manner, and in all things be governed by the like regulations as are prescribed and enjoined in and by the law for the time being for the assessing, levying, and collecting money by taxation for the use of the state, except so far as relates to the time of assessing and collecting, which shall be ascertained in the manner mentioned in the section next preceding; and except also, that the fines and penalties shall, when recovered, be paid to the director of such corporation, and applied to such county uses and purposes as the said corporation shall direct; provided always, that when the said tax shall be ordered to be raised at the same time with the state tax, one-half of the usual fees, and no more, shall be allowed to the said assessor and collector.

Appeal from assessment.

14. That if any person shall think himself or herself aggrieved by any such assessment, he or she may appeal to the commissioners of appeal in and for the township or precinct, agreeably to the provisions for that purpose made in an act entitled, "An act concerning taxes."

Proceedings against delinquents.

15. That in case of non-payment of the assessment of any tax which shall be due at any time different from that fixed for the payment of the state tax aforesaid, for the space of twenty days after demand thereof, the collector of such township shall make out a list of the names of such delinquents, with the sums due from them respectively, thereto annexed, and forthwith deliver the same to some justice of the peace residing in such township, or if necessary, to any other justice of the peace of the said county, and shall, within one week after the expiration of the said twenty days, pay the taxes by him received to the collector of the county.

Proof of demand required.

16. That it shall be the duty of the said justice of the peace, on receiving a list of the names of such delinquents mentioned in the preceding section, to administer an oath or affirmation to the said collector,

that the moneys in the said list mentioned has been duly demanded, or due notice thereof given to or left at the usual place of abode of each delinquent, who may then reside in such township, and thereupon shall give to the collector a receipt for such list, certifying therein the names of such delinquents, and the sums at which they were respectively assessed; and further, that the said township collector shall not be charged by the county collector with the sums in such list contained, until he receive the same from the constable.

Duty of justice.

17. That when any list of the names of delinquents as aforesaid, shall be received by any justice of the peace for prosecution, it shall be the duty of such justice to proceed thereon in the manner prescribed by the then existing law for the recovery from the delinquents of taxes directed to be raised for the use of the state.

Duty of constable.

18. That it shall be the duty of every constable to execute every warrant, precept or other process to him directed and delivered against such delinquents, respectively, or their estates, in the manner prescribed in and by the law for the time being, in cases of the like kind, where taxes are to be raised for the use of the state.

County collector to be elected and give bond.

19. That each of the said corporations shall, at their annual stated meetings, elect some fit person, being a freeholder and resident in such county, and not a member of such corporation, to the office of county collector, who shall, before he enters upon the execution of his office, give bond, with two sureties, being freeholders and residents in the county, to the said corporation, in such penal sum as they shall think proper, conditioned for the faithful performance of the duties of his said office as collector of such county according to law, and who shall continue in office, and exercise all the rights and discharge all the duties appertaining thereto, until his successor shall be lawfully elected and shall have given bond.

Vacancy may be supplied.

20. That if the person so chosen to the office of county collector, shall die or remove out of the county, or become incapable of serving, or shall refuse to serve, or neglect or refuse to give such bond, as aforesaid, then it shall be lawful for the said corporation to elect another in his room.

Officers required to account and may be sued.

21. That the said corporations shall be and they hereby are severally empowered, from time to time, and as they shall judge proper, to require all public

officers in and for their respective counties and others, to render unto them a true account of all the moneys or other property, which they have heretofore received, or shall hereafter receive or be entrusted with, by virtue of this or any other act, for the use of the said corporations or their respective counties, and to institute at law or in equity, such suit or suits against such officers and persons or any of them, or their or any of their legal representatives, for such moneys or other property as aforesaid, or any part thereof, as shall be necessary or proper; and further, that the said corporations are hereby also severally empowered to require such officers and others, to render unto them, from time to time, a true account of all moneys or other property belonging to this state, which such officers or others have received or may receive, and for which they are responsible to and liable to be sued by the said state or its treasurer, or other person in behalf of the state; and also to institute such suit or suits as aforesaid, for the same, as they shall judge proper.

Liability of county collector.

22. That if any county collector shall neglect or refuse to account as aforesaid, to and with such corporation, when thereunto lawfully required, he shall, for every such neglect or refusal, forfeit three hundred dollars, to be recovered with costs, by action of debt, in any court having jurisdiction of that sum, by and in the name of such corporation, and the same when recovered, shall be appropriated to such county uses and purposes as the said corporation shall direct; and the said county collector shall also be liable to be prosecuted in the manner prescribed in the section next preceding.

When taxes collected to be paid.

23. That it shall be the duty of every constable to pay the tax money, which he shall raise from every delinquent on any warrant, precept or other process to him directed for that purpose, to the collector of the township, within eight days after he shall have made the same; and further, that it shall be the duty of said collector to pay such tax money, so by him received, from the said constable, to the county collector, within two weeks after receiving the same.

When township responsible for money lost.

24. That if the collector of any township shall squander, waste, embezzle or become insolvent and unable to pay any tax moneys, or other moneys or property belonging to the said corporation or their respective counties, and by him received, then the said township, for which such collector was chosen or

appointed, shall be liable for and make good such deficiency or loss, by adding the same to the quota of such township in the next assessment to be made therein by the authority of the corporation of such county, and which the assessor of such township is hereby required to assess, under the like penalties as are hereinbefore referred to for neglect of duty.

Duty and liability of township collector and constable.

25. That the collector and constable of every township is hereby directed to render a true account to the inhabitants of such township, at their annual or other meeting, of all moneys which he shall receive on any assessment to be made in such township, by the authority of the corporation of such county, and if there be any overplus money remaining in his hands, he shall pay the same to such person or persons as may be appointed to receive the same by the inhabitants of such township, who at their annual meeting, shall appropriate it to such township uses as they shall think proper to direct; and in case such collector or constable shall not so account and pay as aforesaid, then the inhabitants of the said township are hereby empowered to prosecute him for the same.

County collector to pay to order.

26. That the collector of the county shall, from time to time, pay the money by him received, in pursuance of any assessment made by the corporation of such county, to the order of the corporation, signed by the director for the time being.

Penalty for neglect or refusal.

27. That if any county collector shall neglect or refuse to pay such tax or other moneys by him received as aforesaid, to the order of such corporation, or shall neglect or refuse to perform any of the duties enjoined on him by law, where taxes are to be assessed, levied, raised and collected by the authority of the corporation of the said county, he shall, for every such offence, forfeit and pay three hundred dollars, to be recovered, with costs, by action of debt, in any court of record having cognizance of that sum, by the corporation of the same county, to be applied, on recovery, to such county uses as they shall direct.

County collector's fees.

28. That the county collectors of the several counties of this state shall be entitled to receive two cents, and no more, for each dollar of all taxes and other moneys which they shall receive and pay to the order of such corporation; but in case the board of chosen freeholders of any of the counties in this state are of opinion that the fees named in this section are too high, they are hereby authorized to fix the fees of

the county collector for receiving and paying county money at a less rate; provided, the same be so fixed before the election of any county collector to be affected thereby.

Further duties of justices and constables.

29. That the justices of the peace and constables shall severally perform the like duties, be allowed the like compensation for their services in the premises, be liable to the like fines and penalties, to be recovered by the same persons, and in like manner, and in all things be governed by the like regulations, as are prescribed and enjoined in and by the law for the time being for the assessing, levying and collecting money by taxation for the use of the state, except so far as is herein otherwise directed, and except also, that the fines and penalties, shall in cases of assessments made by authority of the corporation of any, county be paid, when recovered, to the director of such corporation, and applied to such county uses and purposes as the said corporation shall direct.

Fines and penalties to whom paid.

Poor house.

30. That it shall and may be lawful for the board of chosen freeholders of every county in this state, if they shall deem it necessary, to purchase or build a poor house, at such place in the county as the said corporation shall appoint.

By whom governed and regulated.

31. That the said poor house, when built or purchased, shall be under the direction, superintendence and government of the said corporation, who are hereby authorized to appoint such officers, hire such servants, and to make such regulations, ordinances and by-laws respecting the same, as they shall, from time to time, deem necessary or convenient.

Poor employed there.

32. That the poor of the county shall be sent to and kept in such poor house, when built or purchased agreeably to law, at the charge and expense of the county; and the said corporation are hereby empowered to procure such articles, materials and things for their employment, and to put them to such work as they or the officers by them appointed shall, from time to time, direct; and the money necessary to be expended for the purposes specified in this and the preceding section shall be granted and raised by the order of the said corporation, in the like manner as money for other county purposes is directed to be granted, assessed, collected and raised by virtue of this act.

Money, how raised.

Two counties may have one poor house.

33. And whereas, it may be convenient and economical for two or more counties to unite in building or purchasing a poor house—be it therefore enacted,

that the boards of chosen freeholders of any two or more counties are hereby authorized to join in building or purchasing a poor house in common for the said counties, at such place as they shall agree upon, and which, when built or purchased, shall be under the joint direction, superintendence and government of the said corporations, whose duty it shall be to elect such officers, hire such servants, and make such regulations, ordinances and by-laws respecting the same, as they shall, from time to time, deem necessary or convenient.

May manage it jointly.

34. That the said corporations, so uniting in building or purchasing the poor house last mentioned, are hereby empowered to procure such articles, materials and things for the employment of the poor that may be sent to and kept therein, and to put them to such work and service as they or the officers by them appointed shall think proper to direct.

Jointly procure materials, etc.

35. That the moneys necessary to be expended for building, purchasing or repairing the said poor house, maintaining the poor therein, procuring articles, materials and things for their employment, compensating the said officers and servants, and for other incidental expenses, shall be adjusted and apportioned by the said corporations between their respective counties in equal moieties, or by the rates of tax which each shall be assessed to pay for the support of government, or in such other proportion as the said corporations shall deem just and proper; and the sum so ascertained and agreed upon to be paid by each county, shall be granted and raised by the order of the corporation of such county, in the same manner as money for other county purposes is directed to be granted, assessed, collected and raised by virtue of this act.

Expenses to be apportioned.

36. That each of the members of the respective boards of chosen freeholders shall have and receive, out of the moneys raised by order of such boards, [two] dollars for each day he shall be necessarily employed in discharging the duties enjoined on him by this act.

Compensation of chosen freeholders.

37. That the term "township," made use of in this act, shall be understood to comprehend precinct and ward.

"Township," how construed.

38. That the powers and authorities granted to the several boards of chosen freeholders in the several counties within this State, shall be considered to continue in each and every board until the organization of the new board at their annual meeting on the second

Powers and authorities continued until their successors organized.

Wednesday of May, the election of new members to the contrary notwithstanding.

Estate to vest in board.

39. That the lands, tenements and hereditaments which have been granted, conveyed or vested to, or in the board of justices and chosen freeholders of any county, or any person or persons for the use of such county, shall be and remain vested in the board of chosen freeholders of the said county, and shall be, remain and enure to and for the use and benefit of such county, in the same manner and according to such estate, title and interest as the said board of justices and chosen freeholders or other person or persons had therein.

Less than quorum may adjourn.

40. That in case a sufficient number of chosen freeholders of a county, to constitute a board, shall not attend at the time and place of the annual or other legal meeting of the board of chosen freeholders, it shall be lawful for the attending members to adjourn the meeting of the board to such time as they shall think proper.

Power to sell and convey.

41. That the boards of chosen freeholders in the several counties of this state, and their successors in office, shall have full power and authority to sell and convey any lands, tenements, hereditaments, goods and chattles, holden or hereafter to be holden by them for their respective counties, they appropriating the proceeds of such sale or conveyance to the legal use of such county.

When township may build poor-house.

42. That when the board of chosen freeholders of any county shall, at their annual meeting, refuse to go into the measure of building or purchasing a poor house according to the provisions of this act, in case the said board shall be requested so to do by the chosen freeholders of any township or townships of said county, the said chosen freeholders being authorized by a vote of the town meeting of the township or townships from which they shall be chosen, to make such request, the said refusal shall be entered on the minutes of the said board, whereupon such township or townships, so by their chosen freeholders making such request, may then proceed to build or purchase a poor house according to the directions of an act entitled "An act for the settlement and relief of the poor," and every such township or townships, after they have built or purchased such poor house, or have commenced building the same, shall not be liable to pay or contribute in any manner whatsoever, towards building or purchasing any poor house that may afterwards be directed to

And be exempt from assessments for other poor.

be built or purchased by the board of chosen freeholders of such county, nor to the support of the poor of the county, unless by and with the consent of a majority of the inhabitants of said township or townships, manifested by a public vote at an annual town meeting, nor unless the board of chosen freeholders shall pay to such township or townships the full value of all the lands, buildings and improvements which may by them have been built, purchased or otherwise provided for the purposes aforesaid, and in which case it shall be lawful for the overseers of the poor of such township or townships, under their hands and seals, to make a deed or deeds of conveyance, to the boards of chosen freeholders for all such lands, tenements, hereditaments and real estate, so paid for as aforesaid; and further, that the provisions in this section contained, shall extend to and include every township that hath hitherto built or purchased a poor house, with the lands on which the buildings and improvements shall have been erected.

So where they have already built.

43. That it shall be the duty of the several boards of chosen freeholders in this state, in each and every year, within sixty days after their annual meeting, to cause to be made out and published in one or more newspapers, circulated in their respective counties, a full and complete account of all their expenditures for the preceding year.

Annual statement published.

Supplement.

Approved April 6, 1865.

What annual statement to embrace.

44. SEC. 1. The account required to be published by the forty-third section of the act to which this is a supplement, shall embrace a detailed statement of all the expenditures of said boards for the preceding year, including every description of expenditure by items, the amount claimed and the amount allowed in each instance, for what purpose, by whom ordered, and to whom paid; also, a full statement of all moneys paid on account of matters incident to the war, for bounties to volunteers, substitutes, or drafted men, and to whom paid, including discounts or commissions allowed to any person or corporation for negotiating the sale of bonds, notes, or other obligations issued by said boards.

When clerk to cause statement to be published.

45. SEC. 2. It shall be the duty of the clerk of the board to make out and cause such annual statement to be published in the newspapers printed in the county, within thirty days after the annual meeting of the board, and for every neglect so to do, such clerk shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding fifty dollars.

Penalty.

Supplement.

Approved March 31, 1875.

Special meetings, how convened.

46. SEC. 1. That whenever it shall be necessary to convene a special meeting of any board of chosen freeholders of this state, as is directed by the tenth section of the act to which this is a supplement, it shall and may be lawful for the clerk of said corporation, upon receiving notice in writing as required by said tenth section of said original act, to do so by writing under his hand, directed to the respective members of said board, and mailed to the post office nearest to the respective places of abode, which said mailing done by said clerk as aforesaid, shall be at least ten days prior to the day of meeting.

AN ACT to change the dates of the fiscal year of the Board of Chosen Freeholders of Hudson county, and to provide for the funding of the expenses of said Board from May first, one thousand eight hundred and seventy-three, to December first, one thousand eight hundred and seventy-three, and to create a Sinking Fund Commission.

Fiscal year of Board of Freeholders changed from May to December.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the commencement and termination of the fiscal year of the board of chosen freeholders of Hudson county, be changed from the first of May to the first of December in each year, and that a fiscal year commence on the first day of December, one thousand eight hundred and seventy-three, and terminate on the first day of December, one thousand eight hundred and seventy-four, and yearly thereafter between said periods.

May defray expenses by issuing and selling county bonds not exceeding the sum of two hundred and fifty thousand dollars.

2. And be it enacted, That for the purpose of defraying the expense of said board from the first of May, one thousand eight hundred and seventy-three, to the first of December, one thousand eight hundred and seventy-three, said board of chosen freeholders of Hudson county, are hereby authorized to issue and sell as many county bonds as may be necessary for such purpose, provided, the same shall not in amount exceed the sum of two hundred and fifty thousand dollars, to have twenty years to run, which bonds shall be issued and sold by the director of the board and the county collector, for not less than ninety-eight per cent of their nominal value and the accrued interest on said bonds at the time of said sale and shall be signed by them and sealed by the corporate seal of the county; and the county collector shall keep a record and registry of said bonds, and said bonds may be coupon or registered bonds, and registered bonds may at any time be exchanged for coupon bonds, or coupon bonds exchanged for registered bonds at the option of the holder thereof; provided, the board of chosen freeholders, by resolution, shall consent to said exchange; said bonds to bear interest at the rate of seven per centum per annum, and shall be payable semi-annually; and a sufficient sum to pay the interest on said bonds, shall be placed in the tax levy of each year as long as said bonds shall run; and after the year one thousand eight hundred and eighty-four, there shall be placed in the tax levy each year the sum of twenty-five thousand dollars for the payment of the principal of said bonds until the whole principal sum shall be raised.

Proviso.

May retire principal after 1884.

3. And be it enacted, That for the proper management of the fund raised by tax each year, after one thousand eight hundred and eighty-four to retire the principal of said bonds, and for the purpose of taking charge of all other funds raised by tax for any sinking fund purposes, a sinking fund commission is hereby created, to consist of the director of the board of chosen freeholders of Hudson county, the county collector of said county, and one chosen freeholder to be annually elected by said board; and it shall be lawful for said commissioners to take charge of all sums of money raised by tax or otherwise, to retire at maturity any bonds issued by said county, and to securely invest said funds and the interest accruing thereon, so that the funds in the sinking fund shall be available to pay any bonds of the county of Hudson as they fall due, for the payment of which any sinking fund is created; and each of said commissioners shall give a bond to the board of chosen freeholders of said county in such amounts and with such sureties as said board shall fix and approve.

Sinking fund commission created, consisting of director of board of freeholders, county collector, and one chosen freeholder elected annually.

When bonds not sold at par, or discount of two per cent, collector to borrow on temporary loans.

4. And be it enacted, That if the bonds authorized to be issued under this act cannot be sold at par or at a discount of two per centum, it shall be lawful for the county collector to use any of the taxes levied for the year one thousand eight hundred and seventy-three, in paying the expenses of the county from May first, one thousand eight hundred and seventy-three, to December first, one thousand eight hundred and seventy-three, and to borrow on temporary loans as heretofore, in anticipation of the taxes to be paid in December, one thousand eight hundred and seventy-four, such sum as may be necessary to defray the expenses of the county from May first, one thousand eight hundred and seventy-four, to December first, of the same year.

Expenditures of board in any one year not to exceed amount raised by tax, unless by spread of epidemic or contagious disease, a greater expenditure shall be required.

5. And be it enacted, That the expenditures of the board of chosen freeholders in any fiscal year shall not exceed the amount raised by tax for said year unless by the spread of an epidemic or contagious disease a greater expenditure shall be required for the protection of the public health and the board may fix the amount to be raised by tax for county purposes at any meeting of said board held prior to July (15th) fifteenth in any year.

6. And be it enacted, That this act shall be deemed and taken to be a public act and shall take effect immediately.

Approved February 26, 1874.

AN ACT to reorganize the Board of Chosen Freeholders of the county of Hudson.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That from and after the Tuesday next after the first Monday of May next, the board of chosen freeholders of the county of Hudson shall consist of two chosen freeholders from each assembly district of the said county of Hudson, and also, in addition thereto, after the third Tuesday of November, one thousand eight hundred and seventy-five, a director of said board, to be chosen and elected at large, for two years, from the whole county of Hudson; the director at large, after said third Tuesday of November, one thousand eight hundred and seventy-five, shall be the presiding officer of said board, he shall appoint all committees of said board and perform all the duties of a presiding officer, but shall have no vote in said board, except in case of a tie; that every resolution of the said board affecting the interests of the county shall, before it takes effect, be approved in writing by said director, and if he fails or refuses to approve of any resolution within ten days, the clerk of the board of chosen freeholders shall announce such fact to the board at the next regular meeting of said board after the expiration of said ten days, and said board shall proceed to reconsider the same, and if two-thirds of all the chosen freeholders elected shall then pass the resolution it shall take effect as a law, but in every such case the votes shall be taken by yeas and nays, and entered on the minutes; and prior to the election of said director at large the board of chosen freeholders shall elect a director who shall hold his office until the third Tuesday of November, one thousand eight hundred and seventy-five, and possess and exercise the same powers as the director at large provided for by this section, and he shall be paid during the period he holds such office, a salary at the rate of fifteen hundred dollars per annum.

Board of chosen freeholders.

Election of director, at large.

Powers and duties of director.

Freeholders to elect director, and term of office.

Powers of

Salary

2. And be it enacted, That at the spring charter and township elections held in said county in the year one thousand eight hundred and seventy-five, and annually thereafter, there shall be chosen by the electors of each of the assembly districts of the county of Hudson, in the same manner and under the same laws and regulations as are or may be now provided for the election of chosen freeholders in said county, chosen

Election of chosen freeholders, and term of office.

freeholders, as stated in section one of this act, to be members of said board, who shall hold their office for one year, and until others shall be chosen and legally qualified in their stead; and the director at large of said board shall be chosen by the electors of the county of Hudson, at the annual election held for members of the general assembly in said county in the year eighteen hundred and seventy-five, and every second year thereafter in like manner, and the result be ascertained and determined in the same way, the person receiving the highest number of votes in the whole county of Hudson for the office of director at large shall be the director at large and he shall hold his office for two years, and until his successor in office shall be chosen and qualified; any vacancy in his office shall be filled by the board for the unexpired term of his said office; and the terms of the said freeholders so chosen shall commence on the Tuesday next after the first Monday in May next after their election; and the term of said director at large shall commence on the third Tuesday of November, and his term as director shall continue notwithstanding any change in the members of said board of chosen freeholders.

Election of director.

Term of office.

Vacancy, how filled.

Director at large, and term of freeholders, when to commence.

Salaries of freeholders.

3. And be it enacted, That the said members of the board of chosen freeholders shall receive, as a salary and compensation for their services as members of said board, the sum of five hundred dollars each per annum, and the director shall receive the sum of one thousand dollars per annum, such salaries to be paid out of the county treasury by the county collector in equal quarterly payments, as the same become due, and such salary shall be in lieu of any per diem heretofore allowed, and in lieu of all other fees, for committees or otherwise, perquisites, carriage hire, or traveling expenses or personal entertainment whatever, and no other compensation shall be allowed, given or paid to any of said members or the director for any services or expenses whatever, and before taking his office each freeholder and the director elected under this act shall give a bond for the faithful performance of his duty, each freeholder in the sum of ten thousand dollars, and the director of the board in the sum of twenty thousand dollars, with two good and sufficient sureties, to be approved by a justice of the supreme court; the director of said board and each of the chosen freeholders shall, before they enter upon the duties of their office, take and subscribe an official oath to faithfully, impar-

Salary of director.

Director and freeholders, to give bonds.

To take oath.

tially and justly perform all the duties of their office according to the best of their understanding and ability; this oath shall be taken before a justice of the supreme court, and filed in the office of the clerk of the county of Hudson.

Laws made applicable.

4. And be it enacted, That all general laws relating to the board of chosen freeholders, and also all special or private laws relating to the board of chosen freeholders of the county of Hudson, and consistent with this act, shall apply to the board of chosen freeholders of Hudson county, directed to be elected by this act.

Election laws, made applicable.

5. And be it enacted, That in the election of freeholders by this act to be selected, the laws which govern the election of members of the general assembly shall, so far as practicable, be applied to and govern the election of freeholders under this act, and that for the purposes of the election under this act, there shall be constituted, at the election of said freeholders, a board of county canvassers, constituted in the same manner, as provided for by an act entitled "An Act to regulate elections," approved April sixteenth, eighteen hundred and forty-six, and the supplements thereto, and such act and supplement, so far as practicable, shall govern the election under this act, in the manner of holding and conducting said election, and the canvassing the result thereof, and in the duties and the manner of the performance of the duties of the said board of county canvassers in canvassing the election of chosen freeholders under this act.

County canvassers.

Judges of election to attend meeting of county canvassers.

6. And be it enacted, That the board of election in each township, town, ward, precinct or election district of said county in any such election, shall appoint one of the judges of election in such township, town, ward, precinct or election district, to attend the meeting of the said board of county canvassers for such election provided for by this act, as a member thereof, and shall deliver to the judge, who shall have been so appointed, an original statement of the result of such election in said township, town, ward or precinct, or election district, which shall have been made, certified and subscribed, as provided for by the said act, entitled "An Act to regulate elections," approved April sixteenth eighteen hundred and forty-six; and it shall be the duty of the judges of election, who shall have been so appointed, to attend the meeting of the board of county canvassers for such election under this act.

Statement to be delivered.

Time of meeting of board of county canvassers.

7. And be it enacted, That such board of canvassers shall meet on the Tuesday next after the election for chosen freeholders, as provided for by this act, at twelve o'clock, noon, of that day, at the court house of the said county of Hudson, and at that hour, without any delay, the members then present shall proceed to organize and proceed to canvass in the same manner, take the same oaths, and have the same officers, as the board of county canvassers, under the said act, entitled "An Act to regulate elections." approved April sixteenth, eighteen hundred and forty-six, which said act, in these particulars, is hereby made applicable to the elections under this act; the person in each assembly district receiving the highest number of votes in that district for the office of chosen freeholder shall be the chosen freeholder from that assembly district; in any case of a tie vote for director or any chosen freeholder there shall be deemed a vacancy in such office, and the members of the board of chosen freeholders, who shall have been duly elected at such election, shall, by a majority vote, elect a person to fill such vacancy for the term of such office.

Person receiving highest number of votes, to be declared elected.

In case of a tie vote, how elected.

Statement of result of election, to be filed in office of county clerk.

8. And be it enacted, That such board of canvassers shall, immediately after their canvass is concluded, deliver a statement of the result of such election, as directed by the sixty-eighth section of an act entitled "An Act to regulate elections," to the clerk of the county of Hudson, who shall forthwith file the same in his office as an official paper, a certified copy of which statement, signed by the clerk of the county under his official seal, shall be prima facie evidence of the election of the persons therein named, as receiving the highest number of votes as aforesaid, to the offices of chosen freeholders of said county of Hudson and entitle them to their seats in said board of chosen freeholders as chosen freeholders as aforesaid.

Residences of freeholders in the sixth district.

9. And be it enacted, That in the sixth assembly district one of the said two members from said district shall be a resident of the city of Bayonne, in said district, and the other one of said two members from said district shall be a resident of the remaining portion of said sixth assembly district; that in the eighth assembly district one of said members from said district shall be a resident of that portion of the district lying between the Hackensack and Passaic rivers, and the other one of said two members from said district shall reside in the remaining portion of said district; in all cases both of the members from any district shall be

Residences of freeholders in the eighth district.

voted for in said district at large, but shall be a resident of the portion of the district from which he is chosen, one year, at least, prior to his election.

Power and duties of board of chosen freeholders.

10. And be it enacted, That the said board provided for by this act and its successors shall have power to appoint such officers, agents and employees as may be required to do the business of said county, and fix their compensation and term of service; no person shall be appointed by said board to any office or position in said county, or be employed, unless he is a citizen of the state of New Jersey for at least one year prior to his appointment, nor unless by the affirmative vote of at least a majority of all the members of said board, at a regular stated meeting of said board, and that such appointment or employment shall be approved by the director, or acting director of said board in writing; and in all cases where any application shall be made by any person to said board for the appointment to any office or position, or for any employment in said county, such application shall be signed by the person applying for such office or position or employment, and shall set forth the residence and occupation, or late occupation of the applicant, and such application shall be signed by at least three freeholders, residents in said county; and the member of said board who shall hand in and present said application shall endorse thereon words to the effect that the same is handed in and presented by him, and he shall date the same and sign his name thereunder; and no application for the appointment to any office or position in said county, or for any employment, shall be entertained by said board, which does not in all respects comply with and conform to all these provisions; and at the time of such appointment or employment, the said board shall, by resolution, fix the rate of salary or compensation for said appointee or employee, and such salary or compensation shall be fixed by at least a majority vote of all the members of said board; and no appointee of said board having a salary or compensation affixed for his services, shall be eligible to or receive any other appointment or any employment from said board during his said term of office or appointment; which salary or compensation shall not be increased during the term of such appointment, or during such employment.

Application for appointment, to be signed.

Application to be endorsed.

Salary or compensation to be fixed by resolution.

Materials and labor, to be given out by contract.

11. And be it enacted, That all the materials to be furnished or labor to be performed in, on, upon or about any of the institutions or places under the super-

vision of said board, exceeding in amount one thousand dollars, shall be given out by contract; and proposals for any such contract, labor, work or materials shall be published for two weeks in at least two of the newspapers of said county to be selected by said board; and no contract shall be awarded or given to any person except at a regular stated meeting of said board, and such contract or contracts shall be given only to the lowest bidder who shall furnish sufficient security for the performance of the same, such security to be also approved by the board.

Proposals, to be published.

Contracts to be given to the lowest bidder.

Powers and authority of board of freeholders.

12. And be it enacted, That the board of chosen freeholders of the county of Hudson, as elected and organized under this act, shall be vested with all the powers and authority, rights, privileges and duties as are now vested in and imposed upon the present board of chosen freeholders in said county, and that all laws and parts of laws, statutes and parts of statutes now in force and in anywise applicable to the board of chosen freeholders of the said county of Hudson, either public or private, general or special, be and the same hereby are, in all respects and provisions, continued in full force and are made applicable to the board of chosen freeholders elected in accordance with the provisions of this act, except so far as the same may conflict with or be inconsistent with the provisions of this act.

Laws made applicable.

Repealer.

13. And be it enacted, That all acts or parts of acts inconsistent with this act are hereby repealed.

14. And be it enacted, That this act shall be deemed a public act, and take effect immediately.

Approved March 23, 1875.

A SUPPLEMENT to an act entitled "An Act for the punishment of crimes," approved March twenty-seventh, eighteen hundred and seventy-four.

Penalty for disbursing, ordering or voting for disbursement of public moneys in excess of amount appropriated and limited by law.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That if any board of chosen freeholders, or any township committee, or any board of aldermen or common councilmen, or any board of education, or any board of commissioners of any county, township, city, town or borough in this state, or any committee or member of any such board or commission shall disburse, order or vote for the disbursement of public moneys, in excess of the appropriation respectively, to any such board or committee, or shall incur obligations in excess of the appropriation and limit of expenditure provided by law for the purposes respectively of any such board or committee, the members thereof, and each member thereof, thus disbursing, ordering or voting for the disbursement and expenditure of public moneys, or thus incurring obligations in excess of the amount appropriated and limit of expenditure as now or hereafter appropriated and limited by law, shall be severally deemed guilty of malfeasance in office, and on being thereof convicted shall be punished by fine not exceeding one thousand dollars or imprisonment at hard labor for any term not exceeding three years, or both at the discretion of the Court.

2. And be it enacted, That this act shall take effect immediately.

Approved February 7, 1876.